

T H E

Crown Circuit Companion;

CONTAINING

C†

The PRACTICE of the ASSIZES on the CROWN SIDE, and of the Courts
of General and General Quarter Sessions of the Peace:

INCLUDING

A COLLECTION of useful and modern PRECEDENTS of INDICTMENTS
and INFORMATIONS in Criminal Cases, as well at COMMON LAW as
those created by STATUTE:

WHEREIN LIKEWISE

So much of the COMMON and STATUTE LAW is set forth, as to shew the
several Offences; the Offenders Punishment; and in what Cases FELONS are
to have or not to have the Benefit of Clergy; with References to the printed
AUTHORITIES.

TO WHICH ARE ADDED,

The Clerk of Assize's Circuit Companion, with TABLES of FEES of the Officers
and Servants belonging to the Judges, the Clerks of Assize, and Associates
on the several Circuits, &c.

By W. STUBBS, and G. TALMASH,
Of STAPLES-INN, Gentlemen.

THE SIXTH EDITION,
With several ADDITIONS, IMPROVEMENTS, and MODERN REFERENCES,
By THOMAS DOGHERTY, of *Clifford's Inn*.

D U B L I N:

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P R E F A C E

T O T H E

F O R M E R E D I T I O N S .

THE pressing and repeated importunities of many of our friends (*Gentlemen in the Practice of the Law*) have at length prevailed upon us to publish this work; if it falls short of their expectations, we hope they will blame themselves, and pardon us; for we had no intention to appear in print, had not their frequent assurances induced us to believe our labour would prove a public benefit.

How beneficial it may prove, depends intirely upon the use and trial of it; therefore we put ourselves upon our country, and must abide by the verdict of every unprejudiced and impartial practiser.

What was chiefly requested, was only to publish Precedents of Indictments; but as the laws relative to matters indictable are more than a man can carry on his back, it is not to be presumed he can easily bear them in his head; therefore we have endeavoured to distinguish the various facts, under the several and respective Precedents, by defining the offences, and setting forth so much of the Common and Statute Laws, as at one view to demonstrate the circumstances that create the different crimes; the delinquents punishment; how felons are within, or ousted of the benefit of

PREFACE to the FORMER EDITIONS.

clergy ; and also how some misdemeanors are aggrandized by the late statutes, and made felonies. And to render this book more useful, we have briefly shewn the practice and business of the Court of Assizes on the Crown Side, and also of the General and General Quarter Sessions ; the appointment of the several officers attending the Circuit, their duty, and fees usually taken by them, together with the method of drawing up Records of Convictions and Acquittals, and variety of certificates incident to the business of the Assizes and Sessions of the Peace, and also of estreating forfeited recognizances, and the law of appointing the *Custos Rotulorum* and his Deputy, the Clerk of the Peace, and divers other matters, relating to the Crown Law ; the whole of which is humbly left and submitted to the correction of every judicious reader.

P R E F A C E

TO THE

P R E S E N T E D I T I O N.

ALTHOUGH by far the greater part of this work has long afforded useful information in the course of conducting criminal and penal proceedings; yet it must be acknowledged, that some of the precedents in the former editions were defective, and others extended to immoderate lengths.

Prolixity, in every species of pleading, has been much discouraged by the learned Judges in *Westminster-Hall*, as appears by the cases of *Dundas* against Lord *Weymouth*^a; *Price* against *Fletcher*; and *Brislow* against *Wright*, &c.^c respecting actions at law, and *May's* case^d, as to proceedings at the crown bar: to which might be added many recent instances of similar disapprobation.

The forms relating to *perjury*, alone, engrossed the sixth part of the fifth edition, which, being attentively examined and compared with modern decisions and approved precedents, have been cautiously retrenched, and rendered more easy and effectual, within the intention of the legislature in the statute of his late Majesty^e.

^a *Cowp.* 665.

^b *Ibid.* 727.

^c *Dougl.* 2d edit. 665.

^d *Ibid.* 193.

^e 23 *Geo.* II. ch. 11.

PREFACE to *the* PRESENT EDITION.

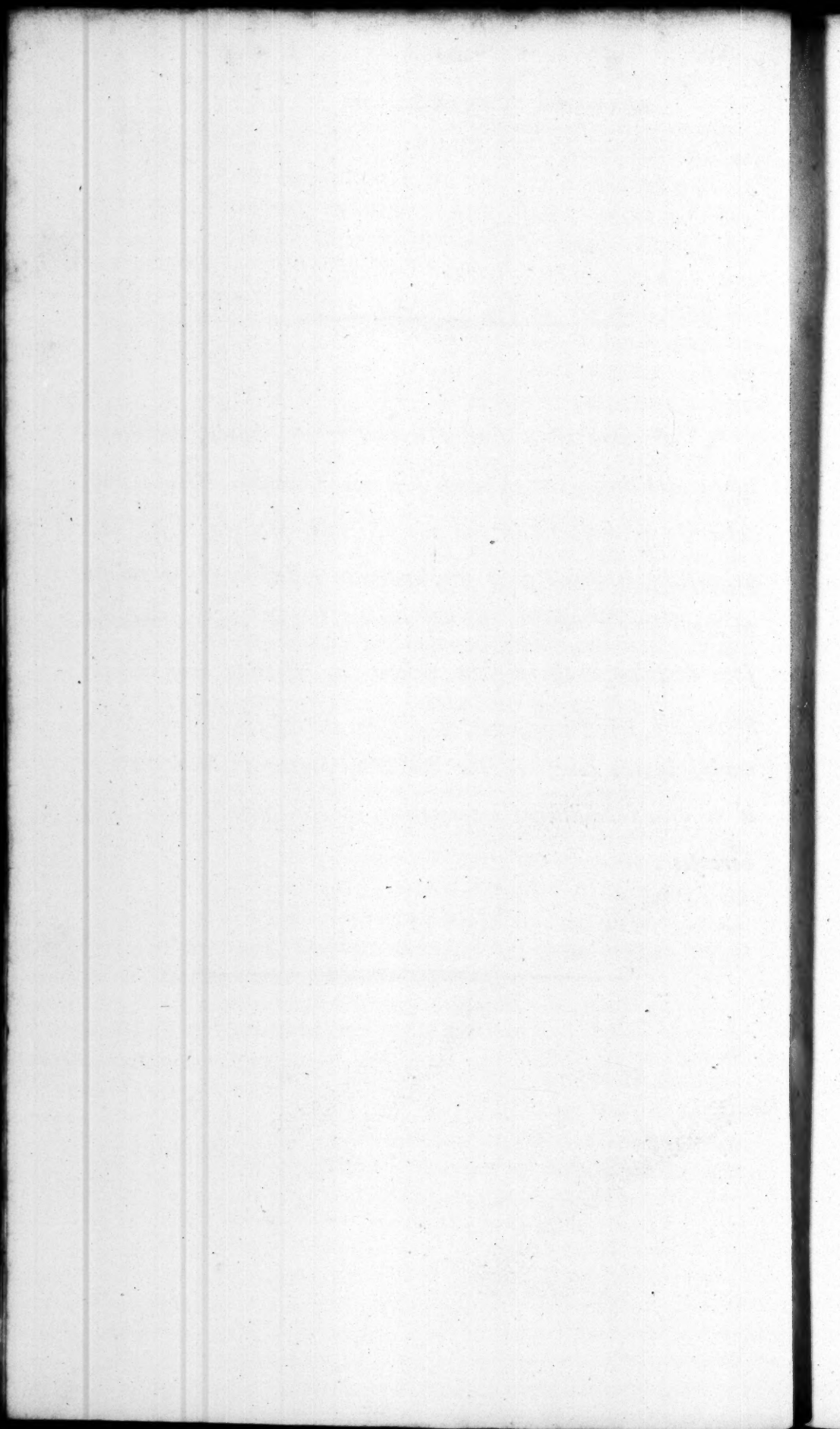
The Editor has supplied the vacant spaces occasioned by expunging the unnecessary matter with precedents, of various descriptions, which have either received the sanction of judicial determination, or been settled by eminent counsel; and he has inserted in the margin the substance of each indictment, containing several counts, so that the drawer may more readily resort to such parts as are immediately applicable to the subject matter before him, which, he hopes, will be found both convenient and useful to the profession.

He has also added some information to the “doctrine of indictments,” and accurately examined the statute and other books appearing to establish it; the whole of which has been inserted under sections, in order to connect that doctrine with subsequent information, arranged under the different heads, by references occasionally made for that purpose.

It will appear that he has not ventured to deviate, in any material instance, from the former editions without the protection of well-founded authorities: but when diligent researches and repeated inquiries have failed in supporting him to make a few amendments where he conceived them wanting, necessity obliged him to permit those parts of the work to remain in their original state, as it would be highly presumptuous in him to alter an antient precedent without being in like manner warranted.

He has, however, endeavoured to explain the utility of such intended alterations; and as his remarks in those particulars, only amount to suggestions, arising from a zealous desire of fulfilling his undertaking with accuracy, he trusts they will meet with a candid and dispassionate investigation.

* * * *A work of a similar nature to this having been published, intituled, The Crown Circuit Assistant, 8vo. 1787, which, (as declared in the advertisement prefixed to it) was principally intended as a supplementary collection of precedents to those herein extant; it has therefore been judged unnecessary to enlarge the present volume by inserting any of the precedents contained in that work, proper references being made, in the course of the following pages, to such parts of it as afford additional information on the subjects treated of hereafter.*



OF THE COURTS ON THE CIRCUIT.

AS matters of fact are triable by juries of the respective counties wherein the facts arise, it would be very inconvenient to compel the juries and parties, upon all occasions, to attend on the King's courts at *Westminster*: therefore, for the ease of the subject, commissions are issued out twice every year; some for trying only, others for trying and finally determining all matters cognizable by virtue of such commissions, arising in each respective county.

The progress of the judges under these commissions is commonly called *the circuit*, and the court held by virtue of them is vulgarly called *the assizes*, from one of the commissions they were generally armed with; which originally only concerned titles to land, though by several statutes the justices of assize have cognizance of certain criminal matters; but their principal and most extensive authority in those cases is by virtue of the * commission of *oyer and terminer*, and commission of *gaol-delivery*.

The circuits in England are six, viz. the *Northern*, the *Western*, the *Oxford*, the *Norfolk*, the *Midland*, and the *Home circuit*. The circuits for *Wales* are four, viz. two for *North*, and two for *South Wales*; for each of which,

By stat. 18 *Eliz.* ch. 8, The King may appoint two persons learned in the laws to be judges in each of the Welsh circuits, which had but one justice before, and grant commissions of association, &c. (See stat. 34 & 35 *Hen. VIII.* ch. 26.

The judges on their circuit sit by virtue of five several commissions:

- I. A commission of *oyer and terminer*.
- II. A commission of *general gaol-delivery*.
- III. A commission of *assize*.
- IV. A commission or writ of *nisi prius*.
- V. A commission of the peace in every county of their circuit.

B

A com-

A commission is a delegation by virtue of the common law, or of an act of parliament, whereby jurisdiction, power, and authority are conferred on others.

The commission of *oyer and terminer* is directed to the judges, and several gentlemen of the county: but the judges are to be of the *quorum*, so as the rest cannot act without them. (See stat. 2 *Edw. III.* ch. 2.) By virtue of this commission they have power to hear and determine treasons, and all manner of felonies and misdemeanors.

[* 3] The commission of general gaol-delivery is directed only to the judges themselves, and the clerk of assize associate. By virtue of this commission they have power to try every prisoner in the gaol, committed for any offence whatsoever; but none but prisoners in the gaol: so that one way or other they rid the gaol of all the prisoners. They proceed * upon indictments taken before justices of the peace at their quarter-sessions (of grand larcenies, and other high offences, not proper to be trusted to the determination of country magistrates) as well as upon indictments taken before themselves.

By stat. 8 *Richard II.* ch. 2, it was enacted, that no man of the law should thenceforth be justice of assize, or of the common deliverance of gaols in his own county. And by the stat. 33 *Hen. VIII.* ch. 24, it was enacted, that no justice, or other man learned in the law, should exercise the office of justice of assize within any county where he was born, or inhabited, upon pain to forfeit 100*l.* But these statutes having been construed to extend not only to justices of assize and justices of gaol delivery, but also to justices of *nisi prius* and justices of *oyer and terminer*, which construction being attended with great inconveniencies, it was by stat. 12 *Geo. II.* ch. 27, enacted, “that it should be lawful for the chief justice and justices of either bench, and the chief baron and other barons of the court of exchequer, and any other person or persons learned in the law, who should be appointed justice or justices of *oyer and terminer*, or gaol-delivery, in any county or counties in England, to exercise the office or offices of justice or justices of *oyer and terminer*, or gaol-delivery, in any such county or counties; notwithstanding they, or any of them, shall have been born or do inhabit within such county or counties; and that they shall not be liable for so doing to the said penalty of 100*l.* or any other penalty whatsoever.”

[* 4] By stat. 19 *Geo. III.* ch. 74, § 70, reciting that “Whereas the courts of *assize*, *nisi prius*, *oyer and terminer*, and *gaol-delivery*, for several counties at large, are often held in or near cities or towns that are counties of themselves, and at the same time with the like courts for the said cities * or towns; and inconveniencies frequently arise in transacting the business of the several courts, for that the lodgings of the judges are situate either only in the county at large, or only in the county of such city or town; it is therefore enacted, that whenever the said courts for any county at large, in that part of *Great-Britain* called *England*, shall be held in or near any city or town that is also a county of itself, and at the same time with the like or any of the like courts for the said city or town, the lodgings of the judges shall be construed and taken to be situate both within the county at large, and also within the county of such city or town, for transacting the business of the assizes for such county at large, and for the county of such city or town, during the time that such judge

judge or judges shall continue therein for the execution of their several commissions.”^a

The judges are to be attended by the sheriff of each county, and his under officers, &c. If he is absent, or negligent in his duty, the judges may fine him.

And also all the justices of the peace of that county where the judges have their assizes are bound to be present; and if they make default, * without lawful impediment, the judges may set a fine upon them for their neglect.

[* 5]

If justices sit by force of a commission, and do not adjourn the commission, it is determined. Those that sit by virtue of a commission are not countermanded by any new commission, unless the new commission be shewn unto them, or proclaimed in the county, or unless the new commissioners do sit by force of the new commission. (See stat. 2 & 3 Ph. & M. ch. 18.)

By 1 Anne, stat. 1. ch. 8, § 5, *No commission of assize, oyer and terminer, general gaol-delivery, or association, writ of si non omnes or assistance, or commission of the peace, shall be determined by the death of the king, but shall continue six months, unless superseded, &c.* (See 7 & 8 Will. III. ch. 27.)

See also stat. 14 Hen. VI. ch. 3, for holding the assizes at *Carlisle* for the county of *Cumberland*; stat. 1 Geo. I. ch. 45, for holding the assizes for the county of *Cornwall*; and stat. 21 Geo. II. ch. 12, for holding the assizes at *Buckingham*.

The judges of *assize*, by virtue of their commissions of *oyer and terminer* and general gaol-delivery, make out precepts under their seals, directed to the sheriffs of each county, for the respective purposes therein contained, which precepts are delivered to every sheriff at least fifteen days before the return of the same; the forms of which precepts are as follow:

Precept for the oyer and terminer.

Kent. WILLIAM earl of *Mansfield*, lord chief justice of our lord the king, assigned to hold pleas in the court of our said lord the king. before the king himself, and Sir *William Henry Ashbursh*, knight, one other of the justices of our lord the king, assigned to hold pleas in the * court of our said lord the king, before the king himself, justices of our said lord the king^b, assigned by letters patent of our said lord the king, under the great seal of *Great-Britain*, to us and others, and any two of us, made to enquire more fully the truth, by the oaths of good and lawful men of the county of *Kent*, and by other ways, means, and methods, by which we shall or may better know (as well within liberties as without) by whom the truth of the matter may be better known and en-

[* 6]

^a Perjury being committed in the Booth-hall, within the limits of the city of *Gloucester*, which is a county in itself, on the trial of a cause before a jury of the county at large, the indictment may be found and tried by a jury of the county at large. *Rex v. Gough*, Dougl. I edit. 760. So if perjury be committed at the *Old-Bailey* on a trial before a *Middlesex* jury, the offender is indicted in *London*, and tried by a jury of the city. *Ibid.* 765. But it is there said by lord *Mansfield* and Mr. justice *Ashbursh*, that the king cannot, without an act of parliament, give the judges a power to try in one county facts arising in another.

By 24 Geo. II. ch. 18. § 5, justices of *nisi prius* for the county of *Middlesex* may, within fourteen days after the end of term, try issues.

^b The practice varies; sometimes the clerk of assize's name is put in this, sometimes in the others.

quired into, of all treasons, misprisions of treasons, insurrections, rebellions, counterfeittings, clippings, washings, false coinings, and other falsities of the money of *Great-Britain*, and other kingdoms and dominions whatsoever; and of all murders, felonies, man-slaughters, killings, burglaries, rapes of women, unlawful meetings and conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenance, oppressions, champerty, deceits, and all other evil doings, offences, and injuries whatsoever; and also the accessaries of them, within the county aforesaid (as well within liberties as without), by whomsoever, and in what manner soever, done, committed, or perpetrated, and by what person or persons, to what person or persons, when, how, and after what manner; and of all other articles and circumstances concerning the premises, and every of them, or any one or more of them, in any manner whatsoever; and the said treasons, and other the premises, according to the laws and customs of *England*, for this time to hear and determine. To the sheriff of the county aforesaid, greeting: On the behalf of our said lord the king, we command you, that

[* 7] * you omit not for any liberty within your bailiwick; but that you cause to come before us and others our fellow justices aforesaid, or any two or more of us, at *Maidstone*, in the said county, on *Monday* the day of next ensuing, twenty-four, as well knights as other good and lawful men of your bailiwick, to do and receive all those things which on the behalf of our said lord the king shall be then and there enjoined them; and that you yourself, and your under-sheriff, be then and there in your own persons, together with your bailiffs and other your ministers, to do those things which to your and their offices appertain in this behalf to be done; and that you have then and there the names of the jurors, and this precept. Dated under our hands and seals, at *Westminster*, the day of in the year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, *France*, and *Ireland*, defender of the faith, &c.

Precept for the gaol-delivery.

Kent. *WILLIAM* earl of *Mansfield*, lord chief justice of our lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, and Sir *William Henry Ashbursh*, knight, one other of the justices of our lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, justices of our said lord the king, assigned to take all the assizes, juries, and certificates, before whatsoever justices arraigned, as well by divers writs of the lady *Anne*, first of *England*, &c. and afterwards of *Great-Britain*, &c. late Queen, and also by divers writs of our lords *George* the first and second, late kings of *Great-Britain*, &c. as by divers writs of our lord the now king, in * the county of *Kent*. To the sheriff of the said county, greeting: On behalf of our said lord the now king, we command you, that you omit not for any liberty in your bailiwick; but that you cause to come before us at *Maidstone*, in the said county, on *Monday* the day of next ensuing, all writs of assize, juries, and certificates, before whatsoever justices arraigned, as well by divers writs of the lady *Anne*, first of *England*, &c.

[* 8]

Ec. and afterwards of *Great-Britain, Ec.* late queen, and also by divers writs of our lords *George* the first and second, late kings of *Great-Britain, Ec.* as by divers writs of our said lord the now king, in your county; together with the pannels, attachments, re-attachments, summons, re-summons, and all other muniments whatsoever, any ways concerning those assizes, juries, and certificates; *provided always*, that the attachments, re-attachments, summons, and re-summons thereof, be made fifteen days before the said *Monday*: And also that you cause to come before the said *William* earl of *Mansfield* and *Sir William Henry Ashurst*, justices of our said lord the now king, assigned to deliver his gaol of the county aforesaid of the prisoners therein being, at the day and place aforesaid, all the prisoners being in the said gaol, together with their attachments, indictments, and all other muniments any ways concerning those prisoners, and of the *venue* of every town and place where the felonies were committed, whereof the said prisoners are indicted, appealed, or arrested, as well within liberties as without; twenty-four, as well knights as other good and lawful men of every hundred in the said county, by whom the truth of the matter may be the better known and enquired into, and who have no affinity to those prisoners; together with four selected men of those towns and places, to do those things which on the behalf of our said * lord the now king shall be then and there enjoined them. *Publicly* also cause to be proclaimed throughout your whole bailiwick, That all they, who will prosecute against those prisoners, be then and there to prosecute against them, as shall be just. *Give notice also*, to all justices of the peace, mayors, coroners, escheators, stewards, also all chief constables and bailiffs of every hundred and liberty within your county, that they be then and there in their own persons, with their rolls, records, indictments, and other remembrances, to do those things which to their offices in that behalf appertain to be done: And that you yourself and your under-sheriff, together with your bailiffs and other your ministers, be then and there, in your own persons, to do those things which to your and their offices appertain in this behalf to be done: And have you then and there the names of the jurors, justices of the peace, mayors, coroners, escheators, stewards, bailiffs, chief constables, and of them whom you shall so cause to come, before whom, and by whom you shall so cause to come: And that you also then and there have this precept. Dated at *Westminster* the
 day of in the year of the
 reign of our sovereign lord *George* the third, king of *Great-Britain, France, and Ireland*, defender of the faith, *Ec.*

[* 9]

T H E
P R A C T I C E and P R O C E E D I N G S
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O N T H E
C R O W N S I D E.

[* 10]
(a) Vide 10
State Tr. 2.

W H E N * the judges first come into the court, the crier makes the following proclamation: (a) *Oyez, Oyez, Oyez!*^a *My lords the king's justices do strictly charge and command all manner of persons to keep silence, while the king's commissions of assize and nisi prius,oyer and terminer, and general gaol-delivery for this county of Kent are openly read, upon pain of imprisonment.*

Then the clerk of the assize, or the clerk of the arraigns, reads the several commissions before-mentioned.

After the commissions have been read, the crier says to the sheriff thus: *Sheriff of the county of Kent, return the several precepts and writs of assize and nisi prius to you directed, and returnable here this day, that my lords the king's justices may proceed thereon; which the sheriff does accordingly.*

[* 11]

* Then the clerk of assize calls the *nomina ministrorum*, namely, the justices of the peace, coroners, stewards, bailiffs, constables, &c.

And then the grand jury are called in order, every one by his name, and when they appear they are sworn by the marshal.

The foreman, by himself, lays his hand on the book, and the marshal administers to him the following oath:

You, as foreman of this inquest, shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge: The king's counsel, your fellows, and your own, you shall keep secret: You shall present no man for envy, hatred, or malice; neither shall you leave any man unpresented for fear, favour, or affection, or hope of reward; but you shall present all things truly as they come to your knowledge, according to the best of your understanding: So help you God.

The rest of the grand jury, by three at a time, in order, are sworn in the following manner:

The same oath which your foreman hath taken on his part, you, and every of you, shall well and truly observe and keep on your part: So help you God.

* An ancient French term, signifying in the English language *bear ye*. It is, however, at this day generally, and, as Sir William Blackstone, in the fourth book of his Commentaries, page 334, says, most unmeaningly, pronounced *O yes*, as the prologue to all proclamations in our courts of justice.

Then

Then proclamation is made to keep silence while the judge gives his charge to the grand jury.

This is the most part of the business of the morning of the first day.

The clerk of the assize, or his officer the clerk of the arraigns, files all recognizances, &c. delivered by the justices in court; such as are to prosecute upon one file, and such as are to answer upon another; and receives all the informations and examinations that have been taken by the justices of the peace, &c.

In the afternoon the court sends for the grand jury, and when they appear the clerk of assize calls them severally by their names, and says, *Gentlemen, * have you agreed upon any bills?* and the clerk of assize bids them present them to the court; and upon the delivery of them he saith:

[* 12]

You are content the court shall amend matter of form, altering no matter of substance, without your privy, in those bills you have found.

The grand jury say, *Yes*; and return to their business again, viz. examining other bills.

Then the court proceeds to arraign such prisoners as are indicted in the manner following:

The clerk of the arraigns says, *A. B. hold up your hand; you stand indicted by the name of A. B. late of, &c. for that you, &c.* so reads the indictment through, and then asks the prisoner, *Are you guilty or not?* If he says *Not guilty*, then the clerk of arraigns says, *How will you be tried?* If he says, *By God and the country*, then the clerk says, *God send you a good deliverance*; and then writes over the prisoner's name, on the indictment (*po. se^a*), which signifies, that he puts himself upon the country; so proceeds to the next, until so many are arraigned as will serve for a petit jury to pass upon at once.

If upon arraignment a prisoner pleads *guilty*, then the clerk of the arraigns writes over the name, on the indictment, (*confesses*), and the prisoner is set aside till the time of giving judgment.

And if a prisoner makes no answer at all, and will not plead, he shall have the same judgment as if he had confessed the indictment. Stat. 12 Geo. III. ch. 20.

When a sufficient number of prisoners are arraigned to be tried by a petit jury, then the clerk of the arraigns calls the jury thus: *You good men * that are impannelled to try the issue joined between our sovereign lord the king and the prisoners at the bar, answer to your names, upon pain and peril that shall fall thereon.*

[* 13]

When the jurors have appeared, then the clerk of the arraigns calls to the bar the prisoners that are to be tried by the jury, and says unto them thus: *These good men that you shall now hear called are those that are to pass between our sovereign lord the king and you, upon your several lives and deaths; if therefore you, or any of you, will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard.*

Then the crier makes proclamation, and says, *If any man can inform my lords the king's justices, the king's serjeant, or the king's attorney, or this inquest to be taken between our sovereign lord the king and the prisoners at the bar, of any treason, murder, felony, or other misdemeanor committed or done by them, or any of them, let them come forth, and they shall be heard; the prisoners stand at the bar upon their deliverance.*

^a To which is added the criminal's sentence after his conviction, viz. if he is to be hanged, thus: "Guilty to be hanged." If for murder, the particular day is expressed after those words.

Then the clerk calls the jury to be sworn, every man severally, and the marshal swears them all in this manner :

You shall well and truly try, and true deliverance make, between our sovereign lord the king, and the prisoners at the bar, whom you shall have in charge, and a true verdict give according to your evidence : So help you God.

Then the crier counts the jurors, as the clerk of arraigns reads their names, and asks them if they are all sworn.

Then the clerk of the arraigns calls the prisoner named in the first indictment to the bar, and bids him hold up his hand, and then says to the jury :

[* 14]

* Look upon the prisoner, you that are sworn, and hearken to his cause.

A. B. stands indicted by the name of A. B. &c. (reading the whole indictment as he did upon the arraignment), and then says : *Upon this indictment he hath been arraigned ; upon his arraignment he hath pleaded not guilty ; and for his trial hath put himself upon God and the country, which country you are ; so that your charge is to inquire, whether he be guilty of this felony, whereof he stands indicted, or not guilty ;* " if you find him guilty, you shall inquire what lands, tenements, goods, and chattels he had at the time of the felony committed, or at any time since ; if you find him not guilty, then you shall inquire if he did fly for it, or not ; if you find he did fly for it, then you shall inquire what goods and chattels he had at the time when he did fly for it, or at any time since ; if you find him not guilty, and that he did not fly for it, say so, and no more, and hear your evidence." ^a

And then the court proceeds to examine the witnesses, upon oath, as well for the king as for the prisoner.

The proceedings against the rest of the prisoners are the same, with this difference only, viz.

The clerk of arraigns, after having read over the indictment, says : *Upon this indictment he hath been arraigned ; upon his arraignment he pleaded not guilty ; and for his trial hath put himself upon God and his country, which country you are ; so that your charge is to inquire, whether he be guilty of this felony whereof he stands indicted, or not guilty ? And further to inquire of him as you had in charge to inquire of the former prisoner, and hear your evidence.*

Then the witnesses are called, sworn, and examined as before.

[* 15]

* When the jury are agreed on the verdict, the clerk of arraigns calls them by their names, and asks them, *if they are agreed on their verdict, and who shall say for them*, and calls the first prisoner to the bar, and bids him hold up his hand. Then says to the jury, *Look upon the prisoner ; you that are sworn, what say you, is he guilty of the felony whereof he stands indicted, or not guilty ?* If they say *Guilty*, then the clerk asks them, *What lands or tenements, goods or chattels, he (the prisoner) had at the time of the felony committed, or at any time since ?* The jury's common answer is, *None to our knowledge*. When the jury say *Not guilty*, then the clerk asks if he (the prisoner) *did fly for it, or not ?* If they find a flight, it is recorded ; but their common answer is, *Not to our knowledge*.

And so the clerk of arraigns proceeds to every prisoner particularly which the jury hath in charge, writing after the words (*po. fe.*) over the several names of the prisoners, *guilty*, or *not guilty*, as the

^a See the note at the end of the abstract of the statute, under title " Black Act," hereafter.

verdict is, and then says to the jury, *Hearken to your verdict, as the court recordeth it; You say, A. B. is guilty of the felony whereof he stands indicted, and that he hath no goods nor chattels; that C. D. is not guilty; and so of the rest; and then concludes, and so you say all.*

Note, That in all indictments for trespasses and misdemeanors (under the degree of felony) the parties indicted are either in prison, or bound to appear by recognizance; but they are not to be tried till after the felons.

When the grand jury is discharged, such persons in gaol that are not indicted, and such as are, but the bills not found to be true, are delivered by proclamation; and such persons that are bound to appear to answer, and no prosecution exhibited against them, are discharged of their recognizances.

* *Note also,* One of the clerks belonging to the clerk of assize, that keeps the gaol-book, in the beginning of the assizes, sets down in the book a note of the day when the assizes are holden, and the judges names, under which he sets down the prisoners names, as they are returned by the sheriff in the calendar, beginning with the reprieves formerly left in gaol, if any, and the rest in order, leaving a reasonable distance betwixt every name; and also of all bails for which recognizances are returned by the justices.

[* 16]

When any indictment is found against any prisoner, and he is arraigned thereupon, the clerk sets down briefly the offence at the end of the name; and enters, after trial, the plea and verdict, as wrote on the indictment; and also enters all orders made in court, for continuance of any man in prison, or sending any to the house of correction; all fines set upon prisoners for trespasses, &c. all defaults upon recognizances to answer, and all submissions, &c.

The clerk of assize makes four calendars of the delivery of the gaol; of the names of such as are to suffer death; such as were burnt in the hand; such as are to be transported; such as are to be whipt; and so on according to the several judgments: one of which calendars is signed by the judge, and delivered to the clerk of assize; one other is signed by the clerk of assize, and delivered to the judge; the third to the sheriff; and the fourth to the gaoler.

Before a defendant can be tried on any traverse at the assizes, he must first go to the clerk of the assize, and take out a copy of the proceedings, drawn up of record, for which he pays so much *per sheet*; and must also sue out a *venire* with the clerk of the assize. And *note also,* if any *subpœnas* are wanting, the clerk of assize grants them.

* When you have obtained your *venire*, you must carry it to the under-sheriff, who will return a jury; and then you must enter your traverse with the judge's marshal.

[* 17]

If a defendant can be prepared, and is minded to try an indictment against him at the same assizes, it is preferred, upon paying for a copy of the proceedings, and entering the traverse as above-mentioned; he may then go on.

Every defendant indicted for a misdemeanor should give full eight days notice of trial to the prosecutor, before the assizes.

All *certioraris* brought by prosecutors or defendants, to remove indictments, are allowed by the clerk of assize, who returns them into the *crown-office*, where the record is made up for trial by the proper clerk of the county, and sent down to the next assizes, to be tried on the *nisi prius* side.

The BUSINESS after the ASSIZES.

The clerk of assize puts all such persons into process who were indicted or presented at the last assizes, and did not appear and plead, and enters their names in a process book.

He ingrosses the process upon parchment, and delivers it to the sheriff in convenient time after the end of the assizes, that the sheriff may have sufficient time to execute the same.

Note, The process is in felony.

1. *A Capias*
2. *An Alias Capias*
3. *An Exigent*

In misdemeanors,

1. *A Venire*
2. *A Capias*
3. *An Alias Capias*
4. *A Pluries.*

[* 18]

* Where the inhabitants of a parish are indicted, or presented, the process is,

1. *A Venire.*
2. *A Distringas.*

The clerk of assize also enters all traverses upon rolls of parchment, and makes a copy for the defendants, who pay for it.

And twice a year (pursuant to stat. 22 and 23 Car. II. ch. 22,) the clerk of assize carries the estreats into the *exchequer* of all fines, issues, amerciaments, and forfeited recognizances, set, imposed, or forfeited at the assizes.^a

He makes copies of indictments, records of convictions and acquittals, &c.

The clerk of assize, upon application, makes out certificates of persons indicted, upon which any one of the judges of the court of *king's bench*, or any justice of the peace of the proper county, will grant warrants for apprehending the parties, and will oblige them to enter into recognizance to answer, or for want of sureties will commit them.^b

The clerk of assize makes out all certificates of convictions for robbery on the highway, burglary, &c. and attends the judge who tried the prisoners, with the prosecutors and the several claimants, to settle the reward; and also makes out certificates to exempt the prosecutors of burglars, horse-stealers, robbers of shops, ware houses, coach-houses and stables, from serving parish offices; which certificate is signed by the judge, and inrolled in the clerk of assize's office. The clerk of assize makes out (when required) divers certificates, &c. relative to the records, and other matters in his office, unnecessary to be here inserted.

[* 19]

A certificate of a judge of assize, to intitle the apprehenders of a house-breaker to forty pounds reward for apprehension, &c.

THESE are to certify, That at the general gaol-delivery holden at *Kingston upon Thames* in and for the county of *Surry*, on *Thursday* the _____ day of this instant before me, *William*, earl of *Mansfield*, lord chief justice of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, and others his majesty's justices assigned to deliver the gaol of the county aforesaid of the

^a See the method of estreating fines and issues, in the practice of sessions, hereafter.

^b The clerk of assize on the western circuit makes warrants called assize warrants.

prisoners

prisoners therein being, *J. M.* was convicted of felony and burglary^a, in breaking and entering the dwelling-house of *T. N.* in the night-time of the first day of *December* last, at the parish of in the county aforesaid, and stealing thereout two guineas and twenty-two shillings, in monies numbered, of the monies of the said *T. N.* and that *T. N.* *J. S.* *R. B.* *J. W.* and *W. S.* did apprehend and take the *J. M.* and did prosecute him so apprehended and taken until he was convicted of the felony and burglary aforesaid; and I do hereby direct and appoint the sheriff of the county of *Surry* aforesaid to pay, unto and amongst the said *T. N.* *J. S.* *R. B.* *J. W.* and *W. S.* the sum of forty pounds in manner following; that is to say, unto the said *T. N.* the sum of fifteen pounds; unto the said *J. S.* the sum of two pounds and ten shillings; unto the said *R. B.* the sum of two * pounds and ten shillings; and unto the said *J. W.* the sum of ten pounds; and unto the said *W. S.* the sum of ten pounds, for the apprehension and conviction aforesaid, pursuant to an act of parliament made in the fifth year of the reign of her late majesty queen *Anne*, intituled, *An act for the encouraging the discovery and apprehending of house-breakers.* Dated the day of in the year of the reign of our sovereign lord *George* the third, now king of *Great-Britain*, *France*, and *Ireland*, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and

[* 20]

R E W A R D S

For apprehending and prosecuting felons.

BY stat. 4 *Will. and Mary*, ch. 8, § 2, Every person who shall apprehend a highwayman, and prosecute him till he be convicted of any robbery committed in or upon any highway, passage, field, or open place, shall have from the sheriff of the county where the robbery and conviction were made and done, without paying any fee for the same, the sum of 40*l.* within one month after such conviction, and demand thereof made, by tendering a certificate to the sheriff, under the hand of the judge, certifying the conviction of such a felon for a robbery done within the county of the said sheriff, and also that such felon was taken by the person claiming the reward. And if any disputes shall arise between the persons apprehending, touching their right to the reward, the judge or justices shall by the said certificate direct it to be paid unto and amongst the parties claiming, in such proportions as to him shall seem just and reasonable. And if the sheriff shall make default of payment, he shall forfeit double, with treble costs. And (a) as a further reward, such person * shall have moreover the horse, furniture, and arms, money, or other goods of the robber, that shall be taken with him, notwithstanding the right of the king or lord of the manor, or of the person tending or letting the same to hire; but saving the right of them from whom they may have been feloniously taken. And (b) if a person is killed in endeavouring to apprehend such highwayman, the sheriff shall pay the like sum of 40*l.* without fee, under the like penalty, to the executors or administrators of the person killed, immediately upon certificate delivered to him under the hand and seal of the judge or justices of assize for the county where the fact was done, or the two next justices, of such person being so killed; which certificate the said judge or justices, upon proof before them made, shall give immediately without fee. And by § 7, Robbers (being out of prison) discovering two or

As to highway men.

Judge may distribute, &c.

(a) § 6.

[* 21]
Their goods, &c.

(b) § 3.

Executors of persons killed in apprehending highwaymen.

Pardon, &c.

^a Vide certificate for burglary in the practice of sessions, hereafter, No. 12.

Streets of
London, &c.

more robbers, shall, upon conviction of the latter, be entitled to pardon for all robberies by them committed before the making of such discovery.

By 6 Geo. I. ch. 23, § 8, Five shillings are allowed for drawing the certificate; and persons taking more shall forfeit 40*l.* recoverable by action of debt, &c. and the streets of London and Westminster, and of other cities, towns, and places, shall be deemed highways as in this matter.

Coiners.

By 6 & 7 Will. III. ch. 17, § 9, 40*l.* for the apprehending, &c. the coiners of false money, upon producing a judge's certificate. Vide also 15 Geo. II. ch. 28. § 7, nearly to the same effect.

Copper money.

[* 22]

By the last stat. and sect. 10*l.* are allowed for the apprehending, &c. coiners of false copper money, upon * producing a judge's certificate. Vide also title "Coining," post.

In what cases a
certificate of ex-
emption from
parish offices is
allowed. Judges
may divide, &c.

By stat. 10 & 11 Will. III. ch. 23, § 1, 2, 3. All and every person or persons, who shall take and prosecute any such felons that commit burglary, house-breaking, or robbery in shops, warehouses, coach-houses, or stables, or that steal horses, to conviction, shall have a certificate thereof without fee, from the judge or justices, expressing the parish or place where such felony was committed; and in case any dispute happen about the right of such certificate, the judge or justices shall direct the certificate into so many shares as they shall think reasonable; which certificate may be assigned over once, and no more; and the proprietor or assignee shall, by virtue thereof, be discharged from all parish or ward offices in the parish or ward where such felony was committed; which certificate shall be inrolled by the clerk of the peace for one shilling fee.

Persons having made use of such exemption shall not then assign over such certificate.

The executors or administrators of persons slain by such felons, in endeavouring to apprehend them, shall have such certificate as aforesaid without fee. Ibid. § 4. [See the certificate, and the assignment thereof by indorsement, in the practice of sessions, hereafter, No. 13, 14.]

Apprehenders

of burglars, &c.
to have 40*l.* and
a certificate.

When and how
paid.

[* 23]

By stat. 5 Anne, ch. 31, § 1, Every person who shall take any one guilty of burglary, or the felonious breaking or entering of any house in the day time, and prosecute them unto conviction, shall receive, above the reward given by 10 & 11 Will. III. ch. 23. the sum of forty pounds, within one month after such conviction, to be paid by the sheriff of the county where the felony was done, without any fee, upon tendering a certificate under the hand of the judge before whom the conviction was, certifying the conviction, and in what parish the felony was committed, * and the taking by the person claiming the reward, to be divided as to him, &c. shall seem just: and if the sheriff shall die, or be removed, in one month after demand, and non-payment, then the succeeding sheriff shall pay the same in one month after demand, and certificate brought; and the sheriff, making default, shall forfeit, to the person or persons to whom such money is due, double the sum, To be recovered in any of the courts of record at Westminster, by action of debt, bill, plaint, or information, with treble costs.

Executors, &c.

§ 2. In case any person shall be killed by such house-breaker, endeavouring to apprehend him, then the executors or administrators, or person to whom the right of administration shall belong, upon certificate

* And they are admissible witnesses against such robbers so discovered. Vide 2 Harv. 434. 6th edit. 611. So are they who receive any reward offered by government, notwithstanding they are interested in the event of the prisoner's conviction. See note under *Newland's Case*, Le. Cr. Ca. 290.

delivered under the hand and seal of the judge of assize of the county where the fact was done, or the two next justices of the peace, of the persons being so killed, shall receive forty pounds from the sheriff where the fact was done; and upon failure of payment, double the sum of forty pounds, to be recovered, with treble costs, as aforesaid.

§ 7. The judge, before whom such felons and house-breakers shall be convicted, shall settle the rights and shares of persons entitled to certificates, and deliver the certificate, without fee, before the end of such assizes or sessions wherein such conviction shall be had. [See the same statute, § 4, as to felons discovering, &c.] Judges may settle, &c.

By 25 Geo. III. ch. 59. Offenders (out of prison) discovering a counterfeiter of lottery tickets are entitled to 50*l*.^a Those who forge lottery tickets.

* Expences to be paid prosecutors and witnesses.

[* 24]

By stat. 25 Geo. II. ch. 36, § 11. The court before whom any person hath been tried and convicted of any grand or petit larceny, or other felony, may at the prayer of the prosecutor, and on consideration of his circumstances, order the treasurer of the county in which the offence shall have been committed to pay him such sum as they shall judge reasonable, not exceeding the expences he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble; and the clerk of assize or of the peace shall forthwith make out such order, and deliver the same to the prosecutor, on paying 1*s*. and the treasurer shall pay the same on sight, and be allowed the same on his accounts.^b Trial and conviction.

And by stat. 18 Geo. III. ch. 19, § 7. The court before whom any person hath been tried and convicted of any grand or petit larceny, or other felony, or before whom any person hath been tried and acquitted of any grand or petit larceny, or other felony, in case it shall appear to the said court that there was a reasonable ground of prosecution, and that the prosecutor had bona fide prosecuted, may order the treasurer to pay to such prosecutor such sum as they shall think reasonable, not exceeding the expences he was bona fide put unto, making also, if he shall appear to be in poor circumstances, a reasonable allowance for his trouble and loss of time; which order the clerk of assize or clerk of the peace, respectively, shall forthwith make out and deliver to him, on being paid for the same 1*s*. and no more; and the treasurer, upon sight of the order, shall forthwith pay the same. Trial and acquittal.

* By stat. 27 Geo. II. ch. 3, § 3. When any poor person shall appear on recognizance in any court to give evidence, the court may order the treasurer to pay him such sum as they shall think reasonable for his time, trouble, and expences; which order the proper officer shall make out for the fee of 6*d*. except in Middlesex, where the same shall be paid by the overseers of the poor where the person was apprehended. Ibid. [* 25] Court may order the treasurer of the county to pay, &c.

§ 4.

And by stat. 18 Geo. III. ch. 19, § 8. The court where any person shall appear on recognizance or subpœna, to give evidence as to any grand or petit larceny, or other felony, (whether any bill of indictment Though no trial, &c.

^a See the offences under the several heads "Black Act, Sheep, Smugglers, and Transportation," hereafter; and the title "Rewards," in the Crown Circuit Assize, 549, 550, 551.

^b By this statute, § 1, Persons advertising a reward for the return of things stolen or lost, &c. with no questions asked, &c. and the printer of such advertisement, shall forfeit 50*l*. to any person who will sue for the same.

be

be preferred or not,) may order the treasurer to pay to him such sum as they shall think reasonable, not exceeding the expences he was bound to put unto, making also, if he shall appear to be in poor circumstance, a reasonable allowance for his trouble and loss of time; which order the clerk of assize or clerk of the peace, respectively, shall forthwith make out and deliver to him, on being paid for the same 6d. and no more; and the treasurer, upon sight of the order, shall forthwith pay the same.

A record of acquittal on an indictment for felony at the assizes.

Caption.

Surry. **B**E it remembered, That at the session of oyer and terminer of our sovereign lord the king, holden for the county of Surry, at Kingston upon Thames, in the said county, on to wit, on the day of in the

[* 26]

Commission of
oyer and terminer.

year of the reign of our sovereign lord George the third, king of Great-Britain, &c. before William earl of Mansfield, lord chief justice of our lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself; Sir William Henry Ashhurst, knight, one other of the justices of our said lord the king, assigned to hold *pleas in the court of our said lord the king, before the king himself; Sir Fletcher Norton, knight, and others their fellows, justices of our said lord the king, by letters patent of our said lord the king, under the great seal of Great-Britain, to them the aforesaid justices, and others, and any two or more of them, made (whereof one of them, the said William earl of Mansfield, or Sir William Henry Ashhurst, knight, among others in the said letters patent named, our said lord the king would should be one), to inquire by the oath of good and lawful men of the county aforesaid, and by other ways, means, and methods, by which they might better know, or be able to know, as well within liberties as without, by which the truth of the matter might be better known and inquired into, of whatsoever treasons, misprisions of treason, insurrections, rebellions, counterfeittings, clippings, washings, false coinings, and other falsifyings of the money of Great-Britain, and other kingdoms and dominions whatsoever, and of whatsoever murders, felonies, manslughters, killings, burglaries, rapes of women, unlawful assemblies and conventicles, unlawful uttering of words, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligencies, concealments, maintenance, oppressions, champerties, deceits, and other misdeeds, offences, and injuries whatsoever, and also the accessaries of them, within the county aforesaid, as well within liberties as without, by whomsoever and howsoever had, done, and committed or perpetrated, and by what, or by which, to whom or by whom, when, how, and after what manner, and of all other articles and circumstances concerning the premises, and every of them, or any one of them, in any manner whatsoever; and the said treasons, and other the premises, for this time to hear and *determine according to the laws and customs of England, by the oath of (*here insert all the names of the grand jury*) good and lawful men of the county aforesaid, then and there sworn and charged to inquire for our said lord the king, for the body of the county aforesaid; it is presented in manner and form following: (that is to say,) Surry. The jurors for our lord the king upon their oath present, That *A. B. (insert the whole indictment.)* Whereupon the sheriff of the said county of Surry is commanded not to forbear for any liberty in his bailiwick, but that he take the said *A. B.* to answer, &c. which said indictment,

[* 27]

Grand jury.

Indictment.

the said justices of our said lord the king, above named, afterwards, to wit, at the delivery of the gaol of the said lord the king of his county of *Surry*, holden at *Kingston upon Thames* aforesaid, in and for the same county, on to wit, the day of in the said year of the reign of our said lord the king, before *William* earl of *Mansfield*, lord chief justice of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself; Sir *William Henry Ashurst*, knight, one other of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself; Sir *Fletcher Norton*, knight; and *Jerome Knapp*, gentleman; and others their fellows, justices of our said lord the king, assigned to deliver his said gaol of the county of *Surry* aforesaid of the prisoners therein being, by their proper hands, do deliver here in court of record, in form of law, to be determined, &c. And afterwards, to wit, at the same delivery of the gaol of our said lord the king of his county of *Surry* aforesaid, holden at *Kingston upon Thames* aforesaid, in and for the county aforesaid, on the said the day of in the said year of the reign of our said lord the king, before *the said justices of our said lord the king last above-named, and others their fellows aforesaid, Cometh the said *A. B.* under the custody of , esquire, sheriff of the county aforesaid, (in whose custody in the gaol of our said lord the king of the county aforesaid, for the cause aforesaid, he had before been committed,) who, being brought to the bar here in his proper person, is committed to the aforesaid sheriff, &c. and forthwith of the premises, in the indictment aforesaid above specified, being asked in what manner he would be tried thereon, he the said *A. B.* says he is not guilty of the premises in the said indictment alledged against him, and thereof for good and ill he puts himself upon the country; therefore let a jury thereupon immediately come before the said justices of our said lord the king last above-named, and others their fellows aforesaid here, by whom the truth of the matter will be better known, and who have no affinity to the said *A. B.* to recognize upon their oath, whether the said *A. B.* be guilty of the premises in the indictment aforesaid above specified, or not; and the jurors of the said jury by the said sheriff for this purpose impannelled and returned, to wit, (*insert all the names of the petit jury*) being called, come, who being chosen, tried, and sworn to speak the truth of and upon the premises aforesaid, in the indictment aforesaid above specified, do say, upon their oath, that the said *A. B.* is not guilty of the premises aforesaid, in the indictment aforesaid above specified, in manner and form as the said *A. B.* for himself above by his plea hath alledged, nor did he withdraw himself on that occasion; upon which it is considered by the court here, that the said *A. B.* of the premises aforesaid, in the indictment aforesaid above specified, be discharged, and do go without day.

At the delivery of the gaol, &c.

the justices,

deliver the indictment to be determined.

[* 28]

Defendant appears under the custody of the sheriff.

Not guilty pleaded.

Petit jury

find him not guilty; nor did he withdraw, &c.

T H E

T H E
P R A C T I C E
O F T H E
General and General Quarter
S E S S I O N S.

Precept to summon the general SESSION, &c.

[* 30]

Middlesex. **W**E William Mainwaring, esquire, and the reverend Sir George Booth, baronet, two of the justices of our sovereign lord the king, assigned to keep the peace in the county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county. To the sheriff of *Middlesex*, greeting. On the part of our said lord the king we command you, that you do not omit for or by reason of any liberty in your bailiwick (except the liberty of *Westminster*^a), but that you cause to come before us, and others our fellow justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, at the *New Sessions-House* on *Clerkenwell-Green*, in the * said county, on the day of now next ensuing, at the hour of in the forenoon of the same day, twenty-four good and lawful men of the body of your county, to inquire, present, do, and perform, all and singular such things which on the part of our said lord the king shall be enjoined them. Make known also to all the justices of the peace of our said lord the king in your county aforesaid, That they be there with their rolls, records, and other memorandums, to do those things which in that behalf belong to their offices to be done. And have you then and there the names of the said jurors, and this precept. Given under our hands and seals, at the *New Sessions-House* aforesaid, this day of in the year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. in the year of our Lord 17

What a session is.

The *session of the peace* is a court of record, holden before two or more justices of the peace, one being of the *quorum*, for the execution of the authority given them by their commission, and certain acts of parliament.

When holden.

This court, by 2 *Hen. V.* stat. 1, ch. 4, is appointed to be held four times in the year, viz. in the first week after *Michaelmas*, *Epiphany*, *Easter*, and the translation of *St. Thomas the Martyr*

* The dean and chapter of the collegiate church of *St. Peter, Westminster*: the city, borough, and town of *Westminster*, in the said county.

(called

and General Quarter Sessions.

(called *Becket*, which was on the seventh of *July*), and oftener, if need be; and is generally held on the *Tuesday* in these weeks. It seems to be the intent and meaning of the said stat. 2 *Hen. V. ch. 4*, that the weeks wherein the aforesaid feasts happen must be first ended, before the sessions can begin.

* But by stat. 14 *Hen. VI. ch. 4*, the justices of *Middlesex* are not obliged to keep sessions above twice in the year; but they may oftener if they think fit. And because of the multiplicity of business arising in this county more than in any other, it is customary to hold eight sessions every year, (to wit) four general quarter, and four general sessions; and in *Middlesex* the justices have a commission of *Oyer and terminer*; which sessions they hold as often as they hold the sessions of the peace. [* 31]

Within the county of *Middlesex* is the city, borough, and town of *Westminster*; which city, &c. hath a distinct commission of the peace, by virtue whereof the justices of that liberty, &c. hold four quarter sessions of the peace every year, at the *Guild-hall*, in *King-street*, *Westminster*; and also have power, by their commission, to take cognizance of offences committed in the precinct of *St. Martin le Grand*, *London*, and twice in every year adjourn the session of the city and liberty of *Westminster* to the court-house of the said precinct of *St. Martin le Grand*. As to the commission for the city, &c. of *Westminster*.

At both the last-mentioned sessions indictments are preferred for felonies, burglaries, &c. which, when returned by the grand jury into court, are, by the respective clerks of the peace, transmitted to the *Sessions-House* in the *Old Bailey*, where the sessions of *oyer and terminer*, and *general gaol-delivery* of *Newgate*, for the city of *London* and county of *Middlesex*, are also holden eight times in the year, (to wit,) in the same weeks in which the sessions are held at the *New Sessions-House*. Indictments transmitted to the *Old Bailey*.

Although the city and liberty of *Westminster* has a separate commission of the peace from that of the county of *Middlesex*, yet indictments for offences committed within the said city and liberty (except the precinct of *St. Martin le Grand*, *London*) are * within the cognizance of the session of the peace of the county of *Middlesex*; and it is much better to prefer indictments at the county sessions, for misdemeanors committed in the liberty of *Westminster*, than at the session for the said liberty, inasmuch as there are eight sessions yearly for the said county, and but four for the liberty; consequently an indictment may be tried and determined in half the time at the session for the county that it can at the liberty. And note, that all indictments exhibited at *Westminster*, for the city and liberty, must particularly set forth the stile of the said city and liberty in the margin, thus, *City, borough, and town of Westminster, in the county of Middlesex*; and if the offence be committed in *St. Martin's le Grand*, you add it to the former, in the margin thus, *and St. Martin's le Grand, London*; then begin your indictment, *The jurors, &c. That A. B. late of the parish of St. Martin in the Fields, within the liberty of the dean and chapter of the collegiate church of St. Peter, Westminster, the city, borough, and town of Westminster, in the county of Middlesex, yeoman, &c.* And if the offence be committed in a parish within *St. Martin's le Grand*, lay the defendant of that parish, and go on with the stile of the said liberty as before, and then add these words, *and Saint Martin le Grand, London, yeoman, on the day of in the year of the reign, &c. with force and arms, at the parish aforesaid, within the liberty aforesaid, in the county aforesaid, &c.* and conclude your indictment. [* 32] Advantage of preferring an indictment in the county session, instead of that for the liberty of *Westminster*. Form of an indictment in the liberty of *Westminster* with and without *St. Martin's le Grand*.

The Practice of the General

[* 33]

Election to try
in either court.

indictment. *Note also*, That if you would prefer your indictment at the county sessions, for any offence committed in any parish within the said city and liberty (except *St. Martin's le Grand*), you must mention the parish generally, and leave out the stile of the liberty, by saying only, *A. B. late of the parish of St. Martin in the Fields, in the county of Middlesex, yeoman*, * and so forth; and if a party should be bound by recognizance to prefer a bill of indictment and prosecute for an offence at the next session of the peace to be holden for the city and liberty of *Westminster*, if the party so bound prefers a bill for the same offence at the session for *Middlesex*, it is the same as if he had preferred his bill at the session for the liberty, and his recognizance shall be safe; for the clerks of the peace, as well for the said county as the said liberty, do yearly, before they send the estreats into the *exchequer*, compare their books of forfeited recognizances; and if it appears, that a party bound to prosecute at *Westminster* hath prosecuted at the session for *Middlesex*, his recognizance is not estreated.

Power of the
justices to hear,
&c.

The justices of the peace have power to hear and determine divers felonies, trespasses, &c. (according to the words of their commission;) but though the justices of the peace have this power, yet now the common practice is, to try petit larcenies and misdemeanors only at sessions of the peace, and those felonies of a higher nature are transmitted as before mentioned. If indictments of felony, above the degree of petit larceny, are preferred at the sessions in the country, the clerks of the peace of the respective counties transmit them to be tried at the assizes on the gaol-delivery holden for such counties where the bills are found; but where a statute creates a crime, and appoints before whom it shall be tried, in such case, if the sessions be not named, they have no jurisdiction; as in *forger*y, upon statute 5 *Eliz.* ch. 14, which provides, That the indictment shall be taken before justices of assize and justices of *oyer and terminer*; * so that an indictment on that statute may be exhibited at the sessions of *oyer and terminer* for the county of *Middlesex*, and not at the sessions for the city and liberty of *Westminster*, for they have no commission of *oyer and terminer*.

[* 34]

No commission
of *oyer and terminer* for the
city, &c.

Who shall at-
tend.

The persons who ought to appear at the sessions of the peace are as follow:

1. The *justices of the peace*; for the sessions cannot be holden without a competent number, who are to return thither such recognizances to answer, prosecute, and to give evidence, as before such justices (in the intervening time between one sessions and another) have been respectively acknowledged and taken: and the justices of the peace ought also to attend by themselves, or clerks, at the session of gaol-delivery, to testify the examinations and informations they have taken.

2. The *custos rotulorum*, by virtue of his place, hath the custody of the rolls of sessions, and ought to attend the sessions by himself, or his deputy, who is clerk of the peace.

3. The *sheriff*, by himself or deputy, must attend to return jurors, receive prisoners committed, and the fines imposed by the court, &c.

4. The constables of hundreds ought to be there, and all other officers to whom any warrant has been directed, in order to make return thereof.

* So it is as to perjury at common law; but perjury on the 5th *Eliz.* ch. 9, is indictable before the justices of session, because it is so appointed by the particular provision of that statute. *Salk.* 406.

5. The

and General Quarter Sessions.

5. The *gaoler* ought to be there, to give calendars to the justices, clerks of the peace, and other officers of the court, of such persons as are in gaol, and to receive such as may be committed for any contempt or offence.

6. The *governor* or *keeper of the house of correction* to give calendars, as aforesaid, of such rogues and disorderly persons as have been committed to his custody.^b

* 7. All jurors returned by the sheriff, by virtue of the precept to him directed.

[* 35]

8. All persons bound by recognizance to answer, prosecute, and give evidence.

9. All *bailiffs* of hundreds and liberties, in respect they are bound to give an account of all sessions process.

10. All *coroners*, &c.

The jurors not appearing, according to their summons, are punishable by loss of issues, which usually make up part of the estreats of sessions; as also the constables, &c. by fine to be set on them.

The justices being met to hold the sessions, the method is to make proclamation, and then read the commission of the peace; which done, the gentlemen returned by the sheriff for the grand jury are called, sworn, and charged, who immediately (if any bills of indictment are ready for examination) proceed to their business.

And the court proceeds to try traverses, petit larcenies, &c.

When the grand jury have agreed upon any bills, they bring the same into court; and the clerk of the peace calls every jurymen by his name, who severally answer, to signify they are present; and the foreman of the jury hands the indictments to the clerk of the peace, who thereupon says to the jury thus: *Gentlemen, you agree the court shall amend matter of form, altering no matter of substance.*

The jury signifying their consent, the clerk of the peace reads the names of the offenders, and offences, of every indictment, whether the bills are found to be true or not (as indorsed by the jury;) and on those bills not found the clerk of the peace makes a cross. And as to those bills found for grand larceny, or crimes of a higher nature, the several witnesses indorsed on the back of the bills are respectively called over, and directed to go to the *Old Bailey* (at such a time when the session sits), and prosecute *A. B.* for felony, or as the case is; then the jury return to examine the witnesses upon such other bills as are brought before them.

[* 36]

When bills of indictment are found by the jury to be true, the prosecutors have a right to process or warrants against the parties indicted, in order to bring them into court to answer; but the practice in *Middlesex* sessions is, not to grant a warrant, in cases of misdemeanor or trespass, till the grand jury be discharged (which seldom happens till the last day of sessions), because persons are frequently bound by recognizance, before the sessions, to answer for the same offence for which they are indicted. The session, though it may hold a week, or more, is but one day in law; therefore parties bound by recognizance ought to have the whole time to come and answer; otherwise two recognizances may be taken for one and the same offence, previous to any plea. [See the form of a bench warrant upon an indictment, hereafter, No. 1.]

Process and recognizance.

If no application be made for a warrant during the sitting of the session, the prosecutor (in case the defendant does not come in and

^b How to be fined for misbehaviour, &c. Vide 17 Geo. II. ch. 5. § 31.

The Practice of the General

plead) may, after the session, apply to the clerk of the peace, at his office, who will certify that a bill of indictment is found (*the form of which see hereafter*, No. 2.); upon whose certificate, any one of the justices of the court of *king's-bench*, or a justice of the peace, will grant a warrant to take the party indicted, and will take sureties or bail for his personal appearance at the next session, to plead to such indictment: or will commit him for want of sureties.

Of the judges
and justices
warrants.

[* 37]

Indorsement by
a justice in whose
county, &c.

The warrant of the judge is directed to his tipstaff, and to all constables, &c. and other peace-officers, and extends all over *England*; whereas the justice's warrant, on such certificate, is executed by * a constable or headborough, and extends no farther than the particular county for which they are officers; except only, that if a warrant be obtained on an indictment in one county, the defendant may be arrested in any other county; but application must be first made to a justice of the peace of such other county, and proof made, on oath, of the hand-writing of the justice granting such warrant; whereupon the justice of the peace will indorse that warrant, and direct it to the constables, &c. of his county, signifying the defendant is to be found there; and by such indorsement command the said constables, &c. to bring the defendant before him, or some other of his majesty's justices of the peace of that county, to answer the premises contained in the said warrant, to which the said justice puts his hand and seal; and if the defendant should be arrested and brought before the said justice, he may bind him in a recognizance, with sureties, to appear at the next session of the peace, to be holden for the county where the indictment was found, to answer and plead to the same. [*See stat. 24 Geo. II. ch. 55.*]

As to notice of
bail.

Note. Justices of the peace very seldom oblige defendants to give notice of the bail they intend to put in, unless for some very heinous offence: but in all cases, if the defendant be arrested by virtue of a judge's warrant, he must remain in custody till such time as he has given twenty-four hours notice, at least, to the prosecutor or his solicitor, of the bail he intends to put in before the judge (*the form of which notice see hereafter*, No. 3); so that the prosecutor in that time may have an opportunity of inquiring after such bail, if they are good and substantial house-keepers; and if the bail are not so, the prosecutor, or his solicitor, may attend the judge, when * the defendant is brought up in order to be bailed, to make their exceptions against them.

Exception a-
gainst them.

[* 38]

When a justice
may bail on a
judge's warrant.

If a defendant should be arrested on a judge's warrant in any place remote from the judge's chambers, or in the vacation time, when the judges are out of town, or on their circuits, a justice of peace may take bail, and the defendant must give the like notice as before-mentioned.

C E R T I O R A R I.

INDICTMENTS preferred at sessions may be removed, by *certiorari*, into the court of *king's-bench*, either by the prosecutor or the defendant.

The writ of *certiorari*, to remove indictments, is sued out of the crown-office.

As to certiorari
and recogni-
zance.

By stat. 5 & 6 Will. & M. ch. 11, *In term time no certiorari, at the prosecution of any party indicted, shall be granted out of the court of king's-bench, to remove any indictment before trial had, and from before the justices of the general or quarter sessions of the peace, unless*

such

such certiorari shall be granted upon motion of counsel and rule of court, in open court; and the parties indicted, prosecuting such certiorari, shall find two manucaptors before one or two justices of the county, in twenty pounds, to plead to the said indictment in the king's-bench, and at their own charges to procure the issue that shall be joined upon the said indictment, to be tried at the next assizes to be holden for the county where the said indictment was found, after such certiorari shall be returnable, if not in London, Westminster, or Middlesex; and if the said cities or county, then to cause it to be tried the next term after such certiorari shall be granted, or the sitting after the said term, if the king's-bench shall not appoint any other time; then notice to be given to the prosecutor, and the said recognizance and certiorari to be certified * into the king's-bench, and there filed, and the name of the prosecutor to be indorsed: and if the party prosecuting such certiorari, being the defendant, shall not before allowance procure such manucaptors to be bound in a recognizance, the justices of the peace may try the said indictment at the sessions, notwithstanding such certiorari so delivered.

[* 39]

And if the defendant prosecuting such certiorari be convicted, then the king's-bench shall give reasonable costs to the prosecutor, to be taxed according to the course of the said court; and within ten days after demand, upon oath, and refusal thereof, he shall have an attachment against the said defendant by the court for his contempt, and the recognizance not to be discharged till the costs so taxed shall be paid. Costs upon conviction.

Nevertheless, in the vacation, writs of certiorari may be granted by any of the justices of the king's-bench, whose names shall be indorsed, and the name of the party at whose instance it is granted; and before the allowance of such writ, the party indicted prosecuting such certiorari shall find such sureties as before mentioned in this act. Certiorari granted in vacation.

And also, upon every certiorari granted within Chester, Lancaster, and Durham, to remove indictments as aforesaid, the parties indicted prosecuting such certiorari shall find sureties to try the said indictments at the next assizes, or general gaol-delivery, and, if convicted, shall be liable to the like costs, to be taxed as by this act is provided where the same are granted out of the king's-bench. Certiorari granted within counties palatine.

Provided, if any indictment be against any person for not repairing highways, causeways, pavements, or bridges, and the title to repair the same may come in question, upon such suggestion, and an affidavit made thereof, a certiorari may be granted to remove the same into the king's-bench, any law to the contrary notwithstanding. When granted for not repairing, &c.

* Provided that the parties shall find two manucaptors to be bound in a recognizance, with condition as aforesaid. Made perpetual by stat. 8 & 9 Will. III. ch. 33.

[* 40]

By stat. 13 Geo. II. ch. 18, § 5, It is enacted, that no certiorari shall be granted to remove any proceeding before any justice or justices of peace, or the general or quarter sessions, unless it be moved or applied for within six calendar months next after such proceedings had; and unless it be duly proved upon oath that the party suing forth the same hath given six days notice in writing to the justice or justices, or two of them, if so many there be, before whom such proceedings shall be had; to the end the said justice or justices, or the parties concerned, may show cause against the granting such certiorari. [See the form of this notice, hereafter, No. 11.]^a When to be applied for, and how.

The

^a See also the form of a certiorari to remove an indictment from the sessions into B. R. and its return. Cro. Cir. Aff. 32, 33, 34.

The Practice of the General

When recognizance on certiorari before a judge K. B.

The party prosecuting any certiorari, to remove an indictment from the quarter sessions, may find two sufficient manucaptors to enter into a recognizance before any one of the justices of the king's-bench, in the same sum, and under the same conditions as are required by the former act, whereof mention shall be made on the back of the writ, under the hand of the justice who took the same, which shall be as effectual to stay proceedings as if taken before a justice of peace in the proper county; and it shall be added to the condition of the recognizance, that the party suing out the certiorari shall appear from day to day in the court of king's-bench, and not depart till discharged by the said court.

[* 41]

* Of proceeding to trial, &c.

THE method of proceeding to trial upon indictments in the courts of general and quarter sessions is as follows :

How recognizance entered into at session.

First, The party indicted comes into court in his proper person, and brings with him two sufficient housekeepers for his pledges ; and his solicitor makes a note of the names and additions of such pledges, which he delivers to the clerk in court, who is to take the recognizance.

Indictment read by the clerk ;

Then the clerk reads the indictment to the party indicted, and says, *Are you guilty or not guilty ?* and the person indicted says *Not guilty*, which is the manner of pleading the general issue.

who takes the recognizance, and how.

Then the clerk calls the party indicted by his name, and takes the recognizance thus : A. B. *you acknowledge to owe to our sovereign lord the king the sum of forty pounds. C. D. and E. H. (the pledges,) you and each of you acknowledge to owe to our sovereign lord the king the sum of twenty pounds, to be levied upon your several goods and chattels, lands and tenements, by way of recognizance, to his majesty's use, upon condition that if you A. B. shall be and appear at the next session of the peace to be holden for this county, and within the three first days of the same session, to try your traverse upon the indictment to which you have now pleaded Not guilty, and not to depart the court without leave ; are you content ?* Then the person who hath pleaded, and his pledges, severally make answer, *Yes, or, We are contented ;* and then depart the court for that time. Two or three days before a traverse for a misdemeanor is intended to be tried, the solicitor for the defendant draws a notice thereof, and serves the prosecutor with a true copy. [See the form, hereafter, No. 4.]

[* 42]

Defendant's notice of appearance.

* If the defendant should be indicted upon the commission of oyer and terminer, then say, *Take notice, I will appear at the session of oyer and terminer to be holden, &c.* and specify the offence.

Application for venire.

When the defendant's solicitor hath served the prosecutor with such notice, he applies to the clerk of the peace for a *venire* for the sheriff to return a jury, and the clerk of the peace makes out the writ, for which he takes two shillings and six-pence ; and upon that writ the sheriff returns a jury, for which he takes ten shillings. *Note also, That the clerk of the peace makes out the writ of subpœna for witnesses ; for every such writ in Middlesex, the clerk of the peace takes two shillings and six-pence. [See the form, hereafter, No. 8.]*

As to subpœna for witnesses.

Defendant appears at the bar.

On the day of trial, the defendant must appear in the court, at the bar, in his proper person, and the solicitor prepares an affidavit of

A certiorari does not lie to remove an indictment for felony from the general quarter sessions of oyer and terminer at Hicks's Hall, without the consent of the prosecutor. *Rex v. Dutcheff of Kingston, Cowp. 283.*

the

the service of the notice, in case the prosecutor does not appear.
[See the form of the affidavit, hereafter, No. 5.]

N. B. *Personal service of the notice is not absolutely necessary; for if you cannot meet with the prosecutor, leaving the notice with any person at the last place of the prosecutor's abode is a good service.*

Personal service of notice necessary.

When the defendant is at the bar, a clerk in the court reads the indictment to the jury, and then says, *to which indictment the defendant hath pleaded not guilty: your business, gentlemen, is to inquire whether he be guilty or not guilty, and hearken to your evidence; then the cryer makes proclamation: Oyez, if any one can inform the king's justices, the king's attorney, the king's serjeant, or this inquest now to be taken, let them come forth and they shall be heard, for the defendant stands at the bar upon his discharge.*

When at the bar, plea.

Then the prosecutor and all the witnesses that appear to be indorsed on the indictment are called * to give^a evidence, and are heard; and if the defendant be found guilty, the court sets a fine upon him adequate to the offence, or other punishment, as the law directs.

Evidence. [* 43]

In case of trespass and assault, the court frequently recommends the defendants to talk with the prosecutor, (that is, to make amends for the injury done him;) and if the prosecutor comes and acknowledges a satisfaction received, the court will set a small fine on the defendant, as three shillings and four-pence, or twelve-pence, &c.

How fined if, &c.

If a prosecutor does not appear against the defendant, according to the notice, the defendant is acquitted, the prosecutor being (by the crier) called three several times to come and give evidence; then the chairman says to the jury to this effect: *Gentlemen, A. B. stands indicted for making an assault upon B. C. the prosecutor does not appear to give evidence; therefore, without you know of your own knowledge that the defendant is guilty, you must acquit him; and thereupon the jury being asked (by the clerk of the peace) whether the defendant is guilty, or not guilty, they say, not guilty; and the defendant pays the jury twelve shillings for the verdict, besides paying the court-fees.*

If the prosecutor does not appear, jury acquit, &c.

Sometimes the prosecutor and defendant agree before the defendant pleads to the indictment, and then the defendant comes into court in his proper person, and pleads guilty to the indictment; and upon proving (by an affidavit of one of the subscribing witnesses, which must be filed) a general release executed by the prosecutor, the defendant submits to a small fine, to wit, such as the court is pleased to impose. Or if the defendant hath pleaded to the indictment *not guilty*, and afterwards * obtains a general release from the prosecutor, the defendant may come into court, and upon relinquishing his former plea, and pleading guilty, and upon proving the release, as above, on motion of the counsel the court will set a small fine.

How, if parties agree before plea, &c.

or if defendant pleads, &c.

[* 44]

If the defendant be indicted by a wrong *Christian* name, he may plead a misnomer, which is to be engrossed on parchment and signed by counsel [See the forms, hereafter, No. 9 & 10], and delivered by the defendant in person, in open court, upon his being charged with the indictment; upon which plea of misnomer the defendant enters into a recognizance, with sureties, to prosecute the same, with effect, the session following; and the defendant is to give notice to the prosecutor, two days at least before that session, that unless he replies, judgment will be given for the defendant.

He may plead a misnomer.

^a As to the law of evidence in general, vide Indexes of 2 H. II. and Le. Cr. Ca. under that head.

If he is known by one name as well as the other, how, &c.

when he may plead *auter foits acquit*.

[* 45] Although the defendant pleads guilty, he may produce evidence in mitigation.

How to apply for a *noli prosequi*, if the prosecutor brings an action, &c.

[* 46]

Election to proceed, &c.

Oftentimes prosecutors reply, that the defendant is as well known by one name as the other; as where one is indicted by the name of *John*, and his true name is *Thomas*, yet if the defendant is commonly called *John*, and that proved by proper witnesses upon the replication, judgment shall pass for the king. *Vide 2 H. H. 238.* Or he may be indicted *de novo* by his true name, which he must shew by his plea, 4 *Black. Comm.* 329. *Vide No. 1c.*

If the defendant be acquitted, he cannot again be indicted for the same offence; but if he should be again indicted he may plead *auter foits acquit*.^a

* There are frequent prosecutions at sessions for trifling assaults, in which cases it is advisable for a defendant not to put himself to the expence of trying the indictment; but to give notice to the prosecutor, that he intends to plead guilty to such indictment; in which case the prosecutor attends the court, with his witnesses, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant for his misbehaviour towards the prosecutor; but before that is done, the court will admit the defendant to call such witnesses as he desires, and will examine them by way of mitigation: and if the prosecutor does not appear, pursuant to the said notice, then, upon making an affidavit of the service of the said notice, the court will set a small fine on the defendant, and discharge him. [See the notice to plead guilty, No. 6.]

If the defendant should have an action brought against him for the same offence of which he stands indicted (which he cannot well judge before the plaintiff declares), the defendant may apply to his majesty's attorney-general for a *noli prosequi*, to be entered on the indictment. For this purpose he must first obtain a certificate from the clerk of the peace, of the whole substance of the indictment, and the time when it was preferred; which certificate must be annexed to an affidavit, purporting, *That such a one did see the clerk of the peace of the county of Middlesex sign the certificate thereto annexed on such a time; and that since or before the time (as the case is) of preferring the indictment, this deponent was served with a copy of a capias, issuing out of his majesty's court of common pleas, at the suit of A. B. the prosecutor of the said indictment, returnable, &c. and that at such a time this deponent did receive a notice of a declaration being filed against him at the suit of the said A. B. the prosecutor of the said indictment, in the common pleas office in the Temple, for assaulting him the said A. B. which said declaration and indictment this deponent saith are for one and the same assault, and not for different offences: whereupon the attorney-general will grant a summons, directed to the prosecutor, to attend him on such a day, to shew cause why a *noli prosequi* should not be entered on such indictment; and if the prosecutor does attend pursuant to that summons, he must make his election whether he will proceed on the indictment, or in the action; and if he does not attend the first summons, a second and a third issue; and if he*

^a For an explanation of this plea, *vide 4 Black. Comm.* 329, 330. For *auter foits convict* and *attaint*, *ibid.* 330. *Vide also* § 103, under the doctrine of Indictments, *post*.

The issues of *auter foits acquit* and *not guilty* cannot be tried by the same jury at the same time. *Captain Roche's Case. Le. Cr. Ca.* 138.

A prisoner acquitted of forgery, on a variance between the instrument produced in evidence and the recital of it in the indictment, cannot plead *auter foits acquit* to another indictment for the same offence, except the instrument be again misrecited in the same manner. *Gogan's Case, ibid.* 389, 390.

and General Quarter Sessions.

does not attend either of them, upon making affidavit of the service of the several summonses on the prosecutor, or leaving them at the last place of his abode, the attorney-general will sign a warrant under his hand and seal, directed to the clerk of the peace of the county, for entering a *cessat processus* on the indictment.

All motions at sessions ought to be made by counsel, if counsel are attending; otherwise the court will hear motions by the solicitors. Solicitor may move, &c. if no counsel present.

Towards the close of the sessions, that is to say, after the grand jury is discharged, and traverses, &c. are tried, the court proceeds to the discharge of such persons as are bound by recognizance to answer. How the court proceeds after discharge of grand jury.

The parties bound to answer are called as they stand entered in the clerk of the peace's book, and if there be no indictment against them, they are discharged upon answering to their names and paying their fees.

* No. 1. *The form of a bench warrant upon an indictment being found.* [* 47]
Middlesex. *To all constables, headboroughs, and other his majesty's officers and ministers within the county of Middlesex, and to every of them whom it may concern.*

THESE are to will and require, and in his majesty's name to charge and command you, upon sight hereof, to bring before us his majesty's justices of the peace of the county aforesaid, at the session of the peace now holden at the *New Sessions-house on Clerkenwell-green*, in and for the said county, the body of *John Doe*, for a *trespass and assault* (if the court shall be then and there sitting) or if not, before us, or some other of his majesty's justices of the peace of the same county, to find sufficient sureties for his personal appearance at this present session, to answer the same, and all such other matters as on his majesty's behalf shall be objected against him; and if he cannot be taken during this present session, that then, so soon after as he shall be taken, you bring, or cause him to be brought, before us, or some other of his majesty's justices of the peace for the said county, to find sufficient sureties for his personal appearance at the next session of the peace to be holden for the said county, to answer as aforesaid, and further to be dealt with according to justice: Hereof you are not to fail at your peril. Dated in open session at the *New Sessions-house* aforesaid, this day of in the year of our Lord 1782.

No. 2. *A certificate of a person's standing indicted.*

Middlesex. THESE are to certify, That at the general quarter session of the peace holden at the *New Sessions-house on Clerkenwell-green*, * in and for the county of *Middlesex*, on *Monday* the day of last past, *W. J.* was and stands indicted for a *trespass and assault* upon *H. N. widow*, to which indictment the said *W. J.* hath not as yet appeared or pleaded. Dated this day of in the year of our Lord 1782. [* 48]

No. 3. *The form of a notice of putting in bail.*

The KING against J M. on the prosecution of W. P.

Mr. *W. P.* TAKE notice, that I shall put in bail before Mr. Justice Buller, at his chambers in *Serjeants-inn, Chancery-lane*, to-morrow, at six o'clock in the evening, for my appearance

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Stand

and General Quarter Sessions.

stand over to the next general ^a session of the peace to be there holden, and that the recognizance by me and my sureties entered into for the trying of the traverse on the above indictment at the ensuing sessions may in the mean time be respited; and the ground upon which this application to the court will be made is upon an affidavit that I have not been able to serve, or cause to be served, with a subpoena a material witness on my behalf, without the benefit of whose evidence I am advised I cannot safely proceed to trial; of all which matters you have hereby notice, that you may come prepared to oppose the said application by counsel, if you shall think fit, or be advised so to do. Dated this day of

1782.

Yours, &c.

To T. B. the prosecutor in the }
above prosecution.

M. C. defendant in the above
indictment.

No. 8. Subpœna for witnesses to give evidence before the grand inquest.

GEORGE the third, by the grace of God of Great-Britain, France, and Ireland, king, defender of the faith, &c. To B W. J H. * L D. and G H. greeting: We command you and every of you, that, all other business and excuses whatsoever ceasing, you appear in your proper persons before our justices assigned to keep our peace in the county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, at the *New Sessions-house* on *Clerkenwell-green*, in the said county, on the
day of next, at the hour of eight in the forenoon of the same day, to testify the truth, and give evidence^a before the grand inquest touching a bill of indictment to be preferred against *E. W.* in a case of trespass and assault; and this none of you are to omit under the penalty of one hundred pounds, to be levied, &c. Witness *William Mainwaring*, esq; at the *New Sessions-house* aforesaid, the day of in the twenty-second year of our reign.

[* 51]

S E L B T.

^a If to give evidence at the sessions for the prosecution say,

“On our behalf against *E. W.* in a case of trespass and assault.”

^a If for the defendant, say

“Between us and *E. W.* in a case of trespass and assault.”

^a Where the king is not a party, say

“In a certain appeal now depending between the churchwardens and overseers of the poor of the parish of *St. Mary, Islington*, appellants, and the churchwardens and overseers of the poor of the * parish of *Saint Luke, Chelsea*, removants, touching and concerning the removal of *M. S.* from the said parish of *Saint Luke, Chelsea*, to the parish of *Saint Mary, Islington*.

Note. There may be four witnesses put in one subpoena.

[* 52]

No. 9. Plea, misnomer of the surname.

AND *Elizabeth* the wife of *J. H.* (who is indicted by the name of *Elizabeth S. spinster*) cometh in her proper person, and having heard the said indictment, she saith, that at the time of

^a Or “general quarter session,” as it may be.

taking

Traverse.

taking the said indictment, and long before, she the said *Elizabeth* was and yet is the wife of the said *J. H.* and then and long before was and yet is called and known by the name of *Elizabeth H.* wife of the said *J. H.* Without this, that she the said *Elizabeth*, at the said time of the taking the said indictment, or at any time since, was *Elizabeth S.* spinster, or then was, or at any time since hath been or now is, called or known by the name of *Elizabeth S.* and this she is ready to verify; wherefore she prayeth the judgment of the court here, and that she may be dismissed and discharged of the said indictment.

No. 10. *Plea, misnomer of the Christian name.*

Traverse.

[* 53]

AND *Elizabeth C.* who is indicted by the name of *Sarah C.* cometh here into court in her own proper person, and prayeth judgment of the said indictment, because she saith that she the said *Elizabeth C.* from the time of her baptism to this present time, was and still is called and known by the name of *Elizabeth*, and by the said *Christian* name is, and during the whole time aforesaid was, called, named, and known: Without this, that she the said *Elizabeth* now is or at any time heretofore * to this day was called, named, or known by the name of *Sarah*, as is supposed by the indictment aforesaid; and this she the said *Elizabeth* is ready to verify; for which reason, and because she the said *Elizabeth* is not named in the said indictment by the name of *Elizabeth C.* she the said *Elizabeth C.* prayeth judgment of the said indictment, and that the same may be quashed.

The effect of pleading these pleas.

Sir *Matthew Hale* says there is little advantage comes by these pleas to the prisoner; and as to the prosecutor, he recommends it as the safer way to allow the plea both as to the surname and Christian name; for he that pleads misnomer of either must in the same set forth what his true name is, and then he concludes himself; and if the grand jury be not discharged, the indictments may presently be amended by them, and returned according to the name he gives himself. 2^o *H. H.* 176, 238.

Pleas of former convictions in bar of clergy.

Plea in abatement. for want of addition of the estate, degree, or mystery of the defendant, to an indictment removed into *B. R.* *Cr. Cir. Aff.* 406.

Plea exhibited in court at the *London* side in the *Old-Bailey*, to bar a felon of the benefit of clergy, having been allowed it once before upon a former conviction in the same court. *Ibid.* 121.

Plea exhibited in court at the *Middlesex* side in the *Old-Bailey*, to bar a felon of the like benefit, having been allowed it once before upon a former conviction at the *assizes.* *Ibid.* 124.

[* 54]

* No. 11. *Notice to a justice of the peace of moving for a certiorari. To S. B. esq; deputy recorder, and one of his majesty's justices of the peace in and for the town of F. in the county of C.*

S I R,

YOU having on the 29th day of *July*, 1778, taken the examination on oath of *A. L.* late of the town of *F.* upon a supposed act of vagrancy, and upon that examination made a pass-warrant under your hand and seal (as deputy-recorder of the said town of *F.*) for the passing and removing of the said *A. L.* the supposed vagrant, from *F.* aforesaid to the parish of *Saint M.* in the town and county of *S.* there to be provided for according to law.

law. And the said *A. L.* the supposed vagrant, by virtue of the said pass-warrant, having been carried and conveyed to the said parish of Saint *M.* when in fact the said *A. L.* the supposed vagrant, hath not, nor ever had, any legal settlement in the said parish of Saint *M.* And the said examination and pass-warrant being illegal and irregular, and the inhabitants of the said parish of Saint *M.* being resolved to seek a remedy for the great burthen, charge, and detriment which they have sustained by the said removal of the said *A. L.* into the said parish of Saint *M.* I do hereby, on the part and behalf of the inhabitants of the said parish of Saint *M.* according to the form of the * statute in such case made and provided, give you notice that his majesty's court of *king's-bench* will, in six days from the time of your being served with * notice, or as soon after as counsel can be heard, be moved on the behalf of the inhabitants of the said parish of Saint *M.* for a writ of *certiorari* to issue out of the said court, and be directed to the proper officers of the quarter sessions of the peace in and for the said county of *C.* for the removal of the record of the duplicates of the said examination and pass-warrant into his majesty's said court of *king's-bench*. Dated this sixteenth day of *November*, in the year of our Lord 1778.

Your humble servant,

W. D. solicitor for the inhabitants of the said parish of Saint *M.*

[* 55]

No. 12. *A certificate of conviction for burglary at the Old-Bailey.*

Middlesex. THESE are to certify, that at the session of gaol-delivery of *Newgate*, holden for the county of *Middlesex*, at *Justice-Hall* in the *Old-Bailey*, in the suburbs of the city of *London*, on *Wednesday* the _____ day of this instant _____, *A. R.* was convicted, for that he, on the sixteenth day of _____ last, about the hour of two in the night of the same day, the dwelling-house of *C. D.* situate in the parish of Saint *Martin in the Fields*, in the said county of *Middlesex*, then and there feloniously and burglariously did break and enter, with intent the goods and chattels of the said *C. D.* in the same dwelling-house then and there being, feloniously and burglariously to steal, take, and carry away. Dated this _____ day of _____ in the year of our Lord 1782.

Selby, clerk of the peace and gaol-delivery of the county of *Middlesex*.

* No. 13. *A certificate to discharge a person from parish offices, &c. for apprehending and prosecuting a person unto conviction for burglary at the Old-Bailey.*

[* 56]

THESE are to certify, that at the session of gaol-delivery of *Newgate*, holden for the county of *Middlesex*, at *Justice-Hall* in the *Old-Bailey*, in the suburbs of the city of *London*, on *Wednesday* the _____ day of this instant _____ before us whose hands are hereunto set, and others his majesty's justices, assigned to deliver the said gaol of the prisoners therein being, *A. B.* was convicted and attainted of felony and burglary, in breaking and entering the dwelling-house of *C. D.* in the night time of the

* 13 Geo. II. ch. 18, § 5. Vide Cr. Cir. Aff. 29, 32, 153, for writs of *certiorari*.

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sixteenth day of *June* last, at the parish of *Saint Martin in the Fields*, in the county of *Middlesex*, with intent to steal the goods, chattels, and monies of the said *C. D.* in the said dwelling-house. And it is hereby further certified, that the said *C. D.* was the person who did apprehend and take him the said *A. B.* and did prosecute him so apprehended and taken until the said *A. B.* was convicted of the said felony and burglary. And pursuant to an act of parliament made in the tenth and eleventh years of the reign of his late majesty king *William the third*, intituled, *An act for the better apprehending, prosecuting, and punishing of felons that commit burglary, house-breaking, or robbery, in shops, warehouses, coach-houses, or stables, or that steal horses*; we the said justices do hereby further certify, that by virtue hereof, and of the said act of parliament, he the said *C. D.* for the apprehension and conviction aforesaid, shall and may be, and he is hereby declared to be, discharged of and from all and all manner of parish and ward offices within the parish of *Saint Martin in the Fields* * aforesaid. Dated this day of in the year of the reign of our sovereign lord *George the third*, &c. and in the year of our Lord 1782.

[* 57]

The above certificate must be ingrossed on parchment, and signed by the lord mayor and recorder; but a certificate should be first obtained from the clerk of the gaol-delivery (who is clerk of the peace of the county of *Middlesex*) of the conviction of the party, and that certificate must be produced and left with the lord mayor or recorder. [See the form of the certificate of conviction, No. 12. and also stat. 10 & 11 W. III. under rewards, ante.]

No. 14. *An Assignment of a certificate for conviction of a felon by indorsement.*

KNOW all men by these presents, That I the within-named *C. D.* of the parish of *Saint Martin in the Fields*, in the county of *Middlesex*, glover, in pursuance of the power given me by the act of parliament within mentioned, and in consideration of the sum of fifteen pounds, of lawful money of *Great-Britain*, to me in hand paid by *E. F.* of the same parish and county, linen-draper, the receipt whereof I do hereby acknowledge, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer, unto the said *E. F.* as well the certificate within written, as all the right, interest, and demand of me the said *C. D.* thereto, and all exemptions, privileges, benefit, and advantage that may be had and made thereof, by virtue of the said act of parliament, as fully as I myself might or could have had if these presents had not been made. And I the said *C. D.* by these presents do hereby covenant to and with the said *E. F.* that I have not assigned the said certificate other than by these presents, nor have * made use thereof myself, nor have done, nor shall hereafter do, any act whereby the said *E. F.* shall or may be deprived of the benefit or advantage which he is intitled to thereby, and by virtue of the said act of parliament. In witness whereof I have hereunto set my hand and seal this day of in the year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. and in the year of our Lord 1782.

[* 58]

How executed.

This must be signed, sealed, and delivered (as other deeds) in the presence of two witnesses, who must subscribe the same.

Note.

and General Quarter Sessions.

Note. Before the assignment is ingrossed upon the back of the Must be certificate, you must carry the certificate to the stamp-office, and stamped. have it stampd with a 5s. stamp.

Of the METHOD, FORM, and TIME of estreating Issues, Fines, Amerciaments, and forfeited Recognizances.

Caption of a General Quarter Session of the Peace for the County of Middlesex, at Clerkenwell-green.

Middlesex. **A**N extract of all the issues, fines, amerciaments, and recognizances forfeited and set to our lord the king, at the general quarter session of the peace of our said lord the king, holden at the *New Sessions-house on Clerkenwell-green*, in and for the county of *Middlesex*, on Monday the day of in the year of the reign of our sovereign lord George the * third, now king of *Great-Britain*, &c. before *William Mainwaring*, esq. the reverend Sir *George Booth*, bart. Sir *John Hawkins*, knight; Sir *Sampson Wright*, knight; *William Addington*, *John Sherwood*, *David Wilmot*, and *William Hyde*, esqrs. justices of our said lord the king, assigned to keep the peace in the county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, *Selby*, esq. clerk of the peace of the county aforesaid, there attending for the space of seven days.

[* 59]

The estreat of a fine upon an indictment.

Of <i>J. W.</i> late of the parish of <i>St. Clement Danes</i>, butcher, for a trespass, and assault at the same parish, whereof he is indicted and convicted, and his fine is set at six shillings and eight-pence, which he paid to the sheriff in court.	<i>The same addition as in the indictment.</i>	s. d. vi viii
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If paid to the sheriff.

Note. The estreat must mention for what offence the fine was imposed.

Where the party is committed for non-payment of his fine.

Of <i>John Dodd</i>, late in the parish of <i>St. Giles in the Fields</i>, labourer, for a trespass, assault, and riot, at the parish of <i>St. Paul, Covent-Garden</i>, whereof he is indicted and convicted, and his fine is set at five pounds, and he is committed to his majesty's gaol of <i>Newgate</i>, there to remain until he shall pay the said fine.	l. v.
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* Of <i>Thomas Jackson</i>, late of the said parish of <i>St. Giles in the Fields</i>, labourer, for the like offence, at the said parish of <i>St. Paul, Covent-garden</i>, whereof he is indicted and convicted, and his fine is set at five pounds, and he is committed as above.	l. v.
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[* 60]

Of <i>John Doe</i>, of <i>Suffolk-street</i>, in the parish of <i>St. Martin in the Fields</i>, in the county of <i>Middlesex</i>, blacksmith, because he came not now here to answer to all and singular such things which against him on the part of our said lord the king should be objected, as by a certain recognizance taken before <i>John Poulson</i>, esq. one of the justices of our said lord the king, assigned to keep the peace in the county of <i>Middlesex</i>, he undertook.	l. xx
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The recognizance to answer as to the principal.

Of

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As to one of the bail; Of *John Rowe*, of *Bow-street*, in the parish of *St. Margaret, Westminster*, joiner, one of the pledges of the said *John Doe*, because he had him not to answer as above. } l.
x

as to the other bail. Of *Margaret Manlove*, of *Hornsey*, widow, the other of the pledges of the said *John Doe*, for the like. } l.
x

Why the sureties are called pledges; Note. *When the party or parties (for whose appearance the recognizance is taken) are bound in the same recognizance in a sum of money, then the security are called pledges, and the party is said to be delivered to bail.*

In like manner it is where the recognizance is taken for the appearance of divers persons, and any of them be bound, there the security are also called pledges.

[* 61] * *The form of an estreat of a recognizance where the offender is not bound.*

Of *Richard Fenn*, of *Turnagain-lane*, in the parish of *St. Andrew, Holborn*, dyer, one of the mainpernors of *William Wiseman*, because he had him not now here to answer as above, as by a certain recognizance taken before *W. Hyde*, esq. one of the justices, &c. he undertook. } l.
x

Of *David Denn*, of the same place, pewterer, the other of the mainpernors of the said *William*, for the like. } l.
x

and why mainpernors. Note. *When the party is not bound himself, then the security is called mainpernors.*^a

In case of bail, it is usual (and very proper) to put the principal or principals first, and security after; but sometimes the justices clerks invert the due order of the recognizance, as in the following instance.

Of *Alexander Forecastle*, of *St. James's, Westminster*, tire-smith, one of the pledges of the under-named *T. G.* and *B. D.* because he had them not now here to answer as above, as by a certain recognizance taken as above he undertook. } l.
x

Of *Thomas Gunbill*, of *Saffron hill*, in the parish of *St. Andrew, Holborn*, peruke-maker, because he came not now here to answer as above, as by the same recognizance he undertook. } l.
v

[* 62] * Of *Barnaby Deck*, of *Hatton-Garden*, in the parish of *St. Andrew, Holborn*, aforesaid, wire-drawer, because he came not to answer as above, as by the same recognizance he undertook. } l.
v

Of *Anthony Tims*, of *Mutton-lane*, in the parish of *St. Giles in the Fields*, butcher, the other of the pledges of the said *T.* and *B.* because he had them not to answer as above. } l.
x

^a For the distinction between mainpernor and bail, vide 3 Black. Comm. 128.

and General Quarter Sessions.

The form of an estreat of a forfeited recognizance to prosecute and give evidence in case of fraud.

Of *Jacob Thomson*, of the parish of *St. George, Hanover-square*, silversmith, because he came not now here to prosecute the law with effect, and give evidence on the behalf of our said lord the king, against *J. T.* in a case of fraud and misdemeanor, as by a certain recognizance, taken before *D. Wilmot*, esq. one of the justices of our said lord the king, he undertook. } l.
x

The form of an estreat of a forfeited recognizance for not prosecuting a traverse.

Of *W. D.* of *Fleet-street*, in the parish of *St. Bridget*, alias *Bride*, in the ward of *Farringdon Without*, silversmith, because he came not now here to prosecute his traverse, upon a certain indictment of trespass and assault, as by a certain recognizance he undertook. } l.
xx

Of *N. M.* of *Chancery-lane*, in the liberty of the Rolls, and parish of *St. Dunstan in the West*, victualler, one of the pledges of the said *William*, because he had him not to prosecute his traverse as above. } .
xx

Of *M. O.* of *N. F.* weaver, the other of the pledges of the said *William*, for the like. } l.
xx

Caption of a session of oyer and terminer at Clerkenwell-green.

Middlesex. **A**N extract of all the issues, fines, amerciaments, and recognizances, forfeited and set to our said lord the king, at the session of oyer and terminer of our said lord the king, holden at the *New Sessions-house*, on *Clerkenwell-green*, in and for the county of *Middlesex*, on *Monday* the day of *June*, in the year of the reign of our sovereign lord *George* the third, now king of *Great-Britain*, &c. before *William Mainwaring*, esq. the Rev. *Sir George Booth*, bart. *Sir John Hawkins*, knight; *Sir Sampson Wright*, knight; *William Addington*, *John Sherwood*, *David Wilmot*, and *William Hyde*, esqrs. and others their fellows, justices of our said lord the king of oyer and terminer.

Note. *There must be four gentlemen in the commission of oyer and terminer to make a session.*

* *Caption of a session of gaol-delivery at the Old-Bailey.*

Middlesex. **A**N extract of all the issues, fines, amerciaments, and recognizances, forfeited and set to our said lord the king, at the session of gaol-delivery of *Newgate* of our said lord the king, holden at *Justice-Hall* in the *Old-Bailey*, in the suburbs of the city of *London*, for the county of *Middlesex*, on *Wednesday* the day of *June*, in the year of the reign of our sovereign lord *George* the third, now king of *Great-Britain*, &c. before the Right Honourable *W. Plomer*, esq. lord mayor of the city of *London*; *Sir Henry Gould*, knight, one of the justices of the court of our lord the king of the bench; *Francis Buller*, esq. one of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king before the king himself; *Sir Richard Perryn*, knight, one of the barons of his majesty's court of exchequer; *Thomas Sainsbury* and *Thomas Wright*, esqrs. aldermen of

D

the

[* 63]

[* 64]

The Practice of the General

the city of *London*, and other their fellows, justices of our said lord the king assigned to deliver his said gaol of *Newgate* of the prisoners therein being.

Of *John Davies*, of the parish of *St. Martin in the Fields*, cook, one of the mainpernors of *Sarah* the wife of *J. W.* because he had her not now here, to prosecute the law with effect, and give evidence on behalf of our said lord the king, against *W. M.* in a case of felony, as by a certain recognizance taken before *W. Addington*, esq. one of the justices of our said lord the king, assigned to keep the peace in the county of *Middlesex*, he undertook. } l.
x

[* 65]

* Of *John Dobikin*, of the same parish, painter, the other of the mainpernors of the said *Sarah*, for the like. } l.
x

Recognizance of a feme-covert is ineffectual, and cannot be estreated.

Note. *A feme-covert cannot be bound by recognizance, though sometimes justices' clerks incautiously take such recognizances, which cannot be estreated.*

The *estreats* upon the Rolls stand in this order, viz.

1. The fines, &c.
2. Recognizances to answer.
3. Recognizances to prosecute traverses.
4. To prosecute and give evidence.

Fines, &c. in the courts of *K. B. C. B.* and *Exchequer* to be estreated into the latter, &c.

N. B. *Where a person is bound by recognizance to prefer a bill of indictment at the session of the peace, in case of felony, and give evidence to the grand jury there; and in case the bill is found to be true, then to prosecute and give evidence at the session of gaol-delivery; in case the party make default in performance of the condition of such recognizance, in both instances the recognizance may be estreated at either session.*

By stat. 22 & 23 Car. II. ch. 22, § 2, it is enacted, *That all fines, post-fines, issues, amerciaments, forfeited recognizances, sum and sums of money, paid in lieu or satisfaction of them, and all other forfeitures whatsoever, which shall be set, imposed, lost, or forfeited in his majesty's courts of king's bench, common bench, or exchequer, shall be certified and estreated into the said court of exchequer twice every year^a yearly; that is to say, all fines, &c. paid or to be paid in lieu or satisfaction of them, or any of them, and all other forfeitures whatsoever, arising in any of the said courts, from the beginning of every Hilary term in every year to the beginning of every Trinity term in every year, shall be certified and estreated into the said court of exchequer the last day of every Trinity term in every year.*

[* 66]

* And by the same statute, § 3, all fines, post-fines, &c. arising in any of the said courts, from the beginning of every Trinity term in every year to the beginning of every Hilary term in every year, shall be in like manner certified and estreated into the said court of exchequer the last day of every Hilary term in every year.

Officers making default, &c.

Every officer and minister to whom it doth, ought, or shall belong, &c. to make certificate or estreat of any of the said fines or forfeitures making default, to forfeit and pay fifty pounds for every default or failure; one moiety to the use of his majesty, &c. and the other to such persons that shall or will sue for the same in any court of record, by action of debt, bill, or information, wherein no wager of law, essoin, or protection shall be allowed. Ibid.

^a So expressed in the statute.

Provided,

and General Quarter Sessions.

Provided, That nothing in this act shall alter or change the course used in the certifying or estreating of issues from the said court of common bench, nor of fines pro licentia concordandi, commonly called *lost fines*, being termly certified and estreated into the said court of exchequer, nor the termly estreating of issues certified out of the office of pleas belonging to the said court of exchequer, to the clerk of estreats there. *Ib.* § 4.

That all fines, &c. set, imposed, lost, or forfeited before a judge of assize, clerk of the market, or commissioners of sewers throughout England, shall be estreated into the said court of exchequer twice in every year; that is to say, from the feast of Saint Michael the archangel in every year to the feast of Easter in every year, shall be certified and estreated into the said court of exchequer before the first day of Trinity term in every year. *Ibid.* § 5.

The like happening from the said feast of Easter in every year to the said feast of St. Michael in every year, shall be certified and estreated into the said court of exchequer before the first day of Hilary term in every year. *Ibid.* § 6.

* Persons making default forfeit fifty pounds, recoverable as before.

That all clerks of the peace and town-clerks within England shall make and deliver to the sheriff or sheriffs of the county, city, or town corporate, where the sessions of the peace are kept, within twenty days after the twenty-ninth day of September in every year yearly, a perfect estreat or schedule of all fines, issues, &c. set, lost, or forfeited in any of the said sessions of peace respectively, which shall be held before Michaelmas, by or upon any person or persons whatsoever, due to his majesty; and also on or before the second Monday after the morrow of All souls, make and deliver unto the said court of exchequer a true and perfect duplicate, certificate and estreat of such estreats so delivered to the sheriffs aforesaid, that the sheriffs may be charged with the monies levied and received, on pain that every such person offending herein, for every default, to forfeit fifty pounds, one moiety to his majesty, and the other to such as will sue for the same, to be recovered as above.

Officers withholding any fine, &c. forfeit treble the value. Perpetual by stat. 4 & 5 W. & M. ch. 24. Vide 3 Geo. I. ch. 15, § 12.

Proviso as to term, issues, &c.

Estreats from the assizes, &c. to be twice a year.

[* 67]
When clerks of the peace and town-clerks shall deliver to the sheriff schedules of all fines, &c.

The method of obtaining a QUIETUS for an estreated recognizance in the court of exchequer, and the forms of certificates upon constats.

Notwithstanding recognizances are forfeited and estreated when the parties bound do neglect to perform the conditions, yet the court of exchequer (when there appears no obstinate or wilful neglect) will grant orders for *quietus*. The method to obtain such orders is in manner following:

* You must first get a *constat* of the estreated recognizance from the *pipe-office* (for which you pay 5s. 4d.) then carry the *constat* to the clerk of the peace of the county where the recognizance became forfeited, who will make out a certificate (how the same became forfeit) upon the back or bottom of the *constat*, for which, in *Middlesex*, you pay but 2s. 6d.

[* 68]
Of the *constat*.

* This is a kind of certificate made by the clerk of the *pipe* and auditors of the exchequer, at the request of any person who intends to plead or move in that court for the discharge of any thing. 3 & 4 Edw. VI. ch. 4. and 13 Eliz. ch. 6 and it is more certain than a certificate; for it certifies what appears upon record. *Terms de Ley*, 169.

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Motion by
counsel on affi-
davit, &c.

Fees for *quietus*.

When you have got a *conflat*, and certificate, you must have affidavits, to shew the court of *exchequer* what impediment prevented the party from performing the condition of his recognizance, upon which you must move the court by counsel; and if there be any reasonable or equitable cause assigned, the court will order a *quietus*; which order is made out by the deputy-remembrancer (whose office is in the *king's bench walks* in the *Temple*), to whom, for the order, you pay two pounds eleven shillings: when you have got the order from the remembrancer's office, you must carry the same to the *pipe-office*, and the clerk of the pipe thereupon makes a *quietus*, for which you pay one pound twelve shillings.

[* 69]

* *The form of a certificate where the party is bound to answer, and no indictment exhibited.*

To the right honourable Sir J. S. lord chief baron of his majesty's court of exchequer, and the rest of the barons of that honourable court.

Middlesex. THESE are to certify, That at the session above-mentioned, *T. B.* esq. then and yet one of his majesty's justices of the peace for the county of *Middlesex*, did certify the recognizance above specified, conditioned for the personal appearance of the above-named *E. G.* at the same session to answer to all such matters of misdemeanor as on his majesty's behalf should be then and there objected against him by *A. L.* for assaulting, beating, and wounding of her; at which same session the said *E. G.* did not appear, according to the condition of the said recognizance, whereby the same became forfeited, and was accordingly estreated into his majesty's court of *exchequer*: and these are further to certify, that, upon search made among the records of my office, I do not find any indictment against the said *E. G.* for the said offence. Dated the day of 1782.

S. Clerk of the peace for the county of Middlesex.

The form of a certificate where the party neglects to prosecute and give evidence.

To the right honourable, &c. (directed as in the former.)

[* 70]

Middlesex. THESE are to certify, that at the session above-named, *R. D.* esq. then and yet one of his majesty's justices of the peace * for the county of *Middlesex*, did certify the recognizance in part above specified, wherein the above-named *N. S.* and *T. B.* were severally bound in forty pounds each, upon condition that the said *N. S.* and *T. B.* should personally appear at the same session, to prosecute the law with effect, and give evidence upon a bill of indictment to be exhibited by them to the grand jury against *A. D.* on a violent suspicion of stealing out of the house of the said *N. S.* a firkin of soap which was found in the custody of the said *E. D.* and if the said bill should be found and returned by the grand jury to be a true bill, then they were to appear at the sessions of gaol-delivery of Newgate, to be holden for the same county, to prosecute and give evidence against the said *A. D.* upon the said indictment, for the offence aforesaid; at which same session of the peace the said *N. S.* and *T. B.* did not, nor did either of them, appear and prosecute, and give evidence against the said

and General Quarter Sessions.

said *A. D.* according to the condition of the said recognizance; nor did they, or either of them, exhibit to the grand jury any bill of indictment against the said *A. D.* for the said offence; whereby the said recognizance became forfeited, and was accordingly estreated into his majesty's court of *exchequer*. Dated the day of 1782.

S. clerk of the peace for the county of Middlesex.

* The form of a certificate, where the party neglects to appear at the proper session he is bound to answer, at which time he is indicted for the offence, and comes at a session subsequent to the forfeiture of his recognizance, and confesses the indictment.

[* 71]

To the right honourable, &c. (directed as in the first.)

THESE are to certify, that at the session (when by indorsement) within-mentioned the within *J. B.* stood bound by his recognizance within-specified, conditioned for the personal appearance of the said *J. B.* at the same session, to answer what should be objected against him by *J. W.* one of the headboroughs of the parish of *St. Leonard, Shoreditch*, for insulting and assaulting him in the execution of his office. And these are further to certify, that at the same session the said *J. B.* was indicted for the offence aforesaid, at which same session the said *J. B.* did not appear, pursuant to the condition of the said recognizance, whereby the same became forfeited, and was accordingly estreated into his majesty's court of *exchequer*. And these are further to certify, that after the said recognizance was so estreated, to wit, at the general quarter session of the peace, holden at the *New Sessions-house on Clerkenwell-green*, in and for the county of *Middlesex*, on the day of 1782, the said *J. B.* came into court and confessed the said indictment, and was fined three shillings and four-pence, which he paid to the sheriff of the said county in court. And these are further to certify, that, upon search made among the records in my office, I do not find any other indictment against the said *J. B.* Dated the day of 1782.

S. clerk of the peace for the county of Middlesex.

* Form of a certificate from the town and county of *S.* where the party neglects to appear at the proper session he is bound to answer, at which time he is indicted for the offence, and comes at a session subsequent to the forfeiture of his recognizance, is tried and acquitted.

[* 72]

To the right honourable, &c. (directed as in the first.)

Town and County of *S.* to wit. } I DO hereby humbly certify, that on the 24th day of *August*, in the year of our Lord 1778, *J. D.* of *C.* gentleman, and *G. B.* of *C.* esq. came before *S. T. Read*, esq. mayor, and *R. V. Sadlier*, esq. two of his majesty's justices of the peace in and for the said town and county. And the said *J. D.* acknowledged himself indebted to our sovereign lord the king in the sum of 100*l.* and the said *G. B.* acknowledged himself so indebted in the sum of 50*l.* of lawful money of *Great-Britain*, upon condition that the said *J. D.* did, and should, personally appear at the next general quarter session of the peace to be holden in and for the town and county of *S.* and then and there answer and plead

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[* 73]

plead to a certain indictment, to be preferred against him by S. M. esq. for felony, and did not depart the court without leave. And I do also certify, that the said J. D. did not appear at the then next general quarter session of the peace holden in and for the said town and county of S. or at any adjournment thereof, pursuant to the recognizance aforesaid, whereby the same recognizance, as well of the said J. D. as G. B. became forfeited, and were estreated accordingly. And I do also further certify, that at the general quarter session of the peace, held at the *Guildhall* in and for the said town * and county of S. on the sixteenth day of *April*, 1779, the said J. D. did personally appear, and pleaded to an indictment preferred against him by the said S. M. at the general quarter session of the peace, held at the *Guildhall* in and for the said town and county of S. on the thirteenth day of *October*, 1778, for feloniously stealing one double-cased gold watch, of the value of 18*l.* and three seals set in gold, of the value of 3*l.* of the goods and chattels of the said S. M. and that at the said general quarter session of the peace, held in and for the said town and county of S. on the said sixteenth day of *April*, 1779, the said J. D. was arraigned and tried on the said indictment, and was by the jury, then and there impannelled and sworn, found *not guilty*, and he was acquitted accordingly. Given under my hand this second day of *July*, 1779.

W. D. clerk of the peace for the said town and county

Record of acquittal for felony, where the bill was found at a quarter sessions holden on Clerkenwell-green, in the county of Middlesex; and the parties (being under recognizance) were tried at the Old-Bailey.

Caption.

[* 74]

Middlesex. **B**E it remembered, That at the general quarter session of the peace of our sovereign lord the king, holden for the county of *Middlesex*, at the *New-Sessions-house*, on *Clerkenwell-green*, in the same county, on *Monday* the * day of * in the * year of the reign of our sovereign lord *George* the third, now king of *Great-Britain*, &c. before *T. L. J. M. E. B.* esquires, and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, upon the oath of *J. F.* gentleman, &c. (*all the names of the grand jury*) good and lawful men of the county aforesaid, then and there sworn and charged to enquire for our said lord the king, for the body of the said county, It is presented in manner and form as followeth; that is to say, *Middlesex.* The jurors, &c. (*recite the whole indictment*). Whereupon the sheriff of the county aforesaid is commanded that he do not omit by reason of any liberty in his bailiwick, but that he take the said *W. W.* and *E. L.* to answer to the premises; which said indictment the said justices of the peace afterwards, to wit, at the delivery of the gaol of our said lord the king of *Newgate*, holden for the county aforesaid at *Justice-Hall* in the *Old-Bailey*, in the suburbs of the city of *London*, on *Wednes-*

All the names of the grand jury.

Indictment.

Gaol delivery at the *Old-Bailey*.

* Upon a demurrer to an indictment found in an inferior court, objections may be taken as well to the jurisdiction of such court as to the subject matter of the indictment: and where the caption states the court of quarter session where such indictment was found to have been holden on an impossible day, it is fatal. *The King v. Fearnley*, 1 Term Rep. 316.

day

day the day of in the said year
of the reign of the said lord the king, before *W. P.* esq; mayor of
the city of *London*; Sir *J. S.* chief baron of the *exchequer* of our
said lord the king; *H. G.* one of the justices of our said lord the
king of the *common pleas*; *J. S.* esq; and others their fellows, jus-
tices of our said lord the king, assigned to deliver his gaol of *New-*
gate of the prisoners therein being, by their proper hands to deliver
here in court of record, in form of law to be determined; and
thereupon at the same delivery of the gaol of our said lord the king of
Newgate afore said, holden for the county afore said, at *Justice-Hall*
afore said, on the * said *Wednesday* the day of
in the year afore said, before the justices of our said lord the king last
above-named, and others their fellows afore said, ^b come the said
W. W. and *E. L.* pursuant to recognizances by them and their
pledges in this behalf first entered into, being brought to the bar
here in their proper persons, who are committed to *T. W.* esq; and
R. A. esq; sheriff of the said county of *Middlesex*; and they the
said *W. W.* and *E. L.* forthwith concerning the premises in the
said indictment above specified, and charged on them as above, be-
ing severally asked in what manner they would be acquitted thereof,
do severally say, that they are *not guilty* thereof; and hereupon for
good and ill they severally put themselves upon the country; there-
fore let a jury thereupon immediately come before the said justices of
our said lord the king last above-named, and others their fellows
afore said, here, by whom the truth of the matter will be better
known, and who have no affinity to the said *W. W.* and *E. L.* or
either of them, to recognize upon their oath whether the said *W. W.*
and *E. L.* be guilty of the premises on the indictment afore said,
above specified, or not: and the jurors of the said jury, by the said
sheriff for this purpose impannelled and returned, to wit, (*here*
name all the petit jury) being called, come, who being chosen, tried,
and sworn to speak the truth of and upon the premises afore said, in
the indictment afore said, above specified, do say, upon their oath,
that the said *W. W.* and *E. L.* are not, nor is either of them, find them not
guilty of the premises afore said, in the indictment afore said, above
specified, in manner and form as the said *W. W.* and *E. L.* for
themselves above by their plea have severally alledged; nor did they
withdraw themselves, nor did either of them withdraw himself, on
that occasion; upon which it is considered * by the court here, that
the said *W. W.* and *E. L.* and each of them, of the premises afore-
said, in the indictment afore said above specified, be discharged and
go without day.

[* 75]

Parties appear,

who plead *not guilty*.

Petit jury

find them not
guilty;

nor did they
withdraw, &c.

[* 76]

* *If the party surrenders himself,*

" Cometh the said *A. N.* in his proper person, and rendereth
himself a prisoner to the king's said gaol of *Newgate*, for the county
of *Middlesex* afore said, under the custody of *T. W.* esq; and *R.*
A. esq; sheriff of the said county of *Middlesex*, on that occasion;
which said *A. N.* being brought to the bar here by the said sheriff,
is committed to the same sheriff, &c. and forthwith, &c. *as before*.

* *If the party was committed, and continues in custody till trial.*

" Cometh the said *H. T.* under the custody of *R. A.* esq; and
Sir *H. H.* knight, sheriff of the said county (unto whose custody
in the gaol of our said lord the king of *Newgate*, for the cause
afore said, he was before committed), being brought to the bar here
in

The Praëice of the General

in his proper person, who is committed to the said sheriff, &c. and forthwith, &c." as before.

Record of conviction of felony and robbery, where the bill was found and trial had, as in the preceding form, the party being in custody.

[* 77]

Indictment.

Command to the sheriff.

[* 78]
Gaol delivery at the Old-Bailey.

The party appears under the custody of the sheriff.

Middlesex. **B**E it remembered, that at the general quarter session of the peace holden for the county of *Middlesex*, at the *New Sessions-house* on *Clerkenwell-green*, in the said county, on Monday the day of in the year of the reign of our sovereign lord *George* the *third, king of *Great-Britain*, &c. before *W. M.* esq; Sir *J. H.* knight; *J. S.* esq; and others their fellows, justices of our sovereign lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, upon the oath of (all the names of the grand jury) good and lawful men of the county of *Middlesex* aforesaid, then and there sworn and charged to enquire for our said lord the king, for the body of the county aforesaid, it is presented in manner and form as followeth; that is to say, *Middlesex.* The jurors for our lord the king upon their oath present, That *J. J.* late of the parish of *St. Giles, Cripplegate*, in the county of *Middlesex*, labourer, on the seventh day of *September*, in the year of the reign of our sovereign lord *George* the third, now king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county of *Middlesex* aforesaid, in the king's highway there, in and upon one *J. W.* in the peace of God and our said lord the king, in the said king's highway, then and there being, feloniously did make an assault, and him the said *J. W.* in bodily fear and danger of his life, in the highway aforesaid, then and there did feloniously put, and one silver watch of the value of three pounds, and twenty shillings in monies numbered, of the goods, chattels, and monies of the said *J. W.* from the person and against the will of him the said *J. W.* in the highway aforesaid, then and there violently and feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity; wherefore the sheriff of the county aforesaid is commanded not to omit for any liberty in his bailiwick, but to take the said *J. J.* to answer the premises: which said indictment the said justices of the *peace afterwards, to wit, at the delivery of the gaol of our said lord the king of *Newgate*, holden for the county aforesaid at *Justice-Hall* in the *Old-Bailey*, in the suburbs of the city of *London*, on *Wednesday* the day of the same month of in the year aforesaid, before *W. S.* esq; mayor of the city of *London*; *R. R.* esq; one of the barons of the *exchequer* of our said lord the king; *T. S.* and *T. W.* esqrs, aldermen of the city of *London*, and others their fellows, justices of our said lord the king, assigned to deliver his gaol of *Newgate* of the prisoners therein being, by their proper hands do deliver here in court of record, in form of law to be determined; and thereupon at the same delivery of the gaol of our said lord the king of *Newgate* aforesaid, holden for the county aforesaid, at *Justice-Hall* aforesaid, on the said *Wednesday* the day of in the year aforesaid, before the said lord the king last above-named, and others their fellows aforesaid, cometh the said *J. J.* under the custody of *T. W.* esq. and *R. A.* esq. sheriff of the county aforesaid, (in

(in whose custody in the gaol of *Newgate*, aforesaid, for the cause aforesaid, he was before committed), being brought to the bar here in his proper person, is committed to the said sheriff; and forthwith, concerning the premises in the said indictment above specified and charged on him as above, being asked in what manner he would be acquitted thereof, the said *J. J.* saith, that he is not guilty thereof, and concerning this for good and ill he puts himself upon his country; therefore let a jury thereupon immediately come before the said justices of our said lord the king last above-named, and others their fellows aforesaid, here, by whom, &c. and who are of no affinity to the said *J. J.* to recognize, upon their oaths, whether the said *J. J.* be guilty of the felony and robbery aforesaid, or not; and the jurors of the said *jury, by the said sheriff to this matter impannelled and returned, to wit, (*here name all the petit jury*) being called, come, who being chosen, tried, and sworn to speak the truth of and concerning the premises aforesaid, say upon their oath, that the said *J. J.* is guilty of the felony and robbery aforesaid, in the indictment specified, charged upon him above in manner and form as by the said indictment above against him is supposed; and that he at the time of committing the said felony and robbery, or at any time since, had no goods or chattels, lands or tenements, to the knowledge of the said jurors; and upon this it is required by the court here of the said *J. J.* if he hath or knows any thing to say for himself, why the court here ought not to proceed to judgment and execution concerning him upon the said verdict, who says nothing besides what at first he had said; whereupon all and singular the premises being seen and understood by the court here, it is considered by the court here, that the said *J. J.* be hanged by the neck until he be dead.

Not guilty
pleaded.

[* 79]
Petit jury

find him guilty;

who had no
goods, &c.

Judgment of
death.

Record of the discharge of a recognizance at a general quarter session of the peace holden on *Clerkenwell-green* for the county of *Middlesex*.

BE it remembered, that at a general quarter session of the peace of our sovereign lord the king, holden at the *New Sessions-house* on *Clerkenwell-green*, in and for the county of *Middlesex*, on Monday the day of in the year of the reign of our sovereign lord *George* the third, now king of *Great-Britain, France, and Ireland*, defender of the faith, before *W. M.* esq. Sir *J. H.* knight; *J. S.* esq. and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county * of *Middlesex* aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, *J. F.* esq. then one of the justices of our said lord the king, assigned to keep the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, doth certify and deliver here in court a certain recognizance taken before him the day of one thousand seven hundred and eighty-two, of record, to be determined in form of law; the tenor of which same recognizance is as followeth: *Middlesex, J. D.* of *Bishop's-court* (in the liberty of the *Rolls*), *Chancery-lane*, in the parish of *St. Dunstan in the West*, watch-maker, doth acknowledge to owe to our sovereign lord the king the sum of forty pounds; *E. H.* and *J. B.* of the same place, gold chain-makers, severally acknowledge to owe to our said sovereign lord

[* 80]

The recogni-
zance.

lord the king the sum of twenty pounds, on condition that the said *J. D.* shall personally appear at the next general quarter session of the peace, to be holden at the *New Sessions-house on Clerkenwell-green* for the said county, to answer to all such matters of misdemeanour as on his majesty's behalf shall be then and there objected against him by *H. M.* for cheating and defrauding him of diamonds of the value of forty pounds, or thereabout, under false colours and pretences, and not depart the court without licence, then this recognizance to be void, otherwise to be in full force; and afterwards, to wit, at the same general quarter session of the peace of our said lord the king, holden for the county aforesaid at the *New Sessions-house on Clerkenwell-green*, in the county aforesaid, on the said *Monday* the day of in the year aforesaid, before the aforesaid justices of our said lord the king, and others * their fellows aforesaid, being the next general quarter session of the peace, holden for the county aforesaid, after the said day of one thousand seven hundred and eighty-two, the aforesaid *J. D.* cometh in his own proper person, and thereupon publick proclamation is made, that if any one would inform the said justices here against the said *J. D.* he might come forth and be heard; and because the aforesaid justices and court here do find nothing ill of him the said *J. D.* it is considered by the court here, that the said *J. D.* be discharged of his recognizance aforesaid, and that he go thereof without day.

[* 81]

Party appears.

Record of conviction of a person for keeping a disorderly house, upon the commission of oyer and terminer, at an adjourned session on *Clerkenwell-green* for the county of *Middlesex*.

Middlesex. **B**E it remembered, that at the session of oyer and terminer of our sovereign lord the king, holden at the *New Sessions-house on Clerkenwell-green*, in and for the county of *Middlesex*, on *Monday* the day of in the year of the reign of our sovereign lord *George* the third, now king of *Great-Britain*, &c. before *W. M.* esq. Sir *J. H.* knight, and *G. S.* esq. and others their fellows, justices of our said lord the king, assigned by letters-patent of our said lord the king, under his great seal of *Great-Britain*, to the same justices above-named, and others, and any four or more of them directed, to inquire more fully the truth, by the oath of good and lawful men of the said county of *Middlesex*, and by other ways, means, and methods by which they should or might better know (as well within liberties as without) by whom the * truth of the matter may be better known, of all treasons, misprisions of treason, insurrections, rebellions, counterfeittings, clippings, washings, false coinings, and other falsities of the money of *Great-Britain*, and other kingdoms or dominions whatsoever; and of all murders, felonies, manslaughters, killings, burglaries, rapes of women, unlawful meetings, conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligencies, concealments, maintenance, oppression, champerties, deceits, and all other evil doings, offences, and injuries whatsoever; and also of the accessaries of them, within the county aforesaid, (as well within liberties as without) by whomsoever, and in what manner soever done, committed, or perpetrated, and by whom or to whom, when, how, and after what manner; and of all other articles and circumstances concerning the

[* 82]

and General Quarter Sessions.

the premises, and every of them, or any of them, in any manner whatsoever; and the said treasons, and other the premises, to hear and determine, according to the laws and customs of *England*, by the oath of (*here insert the names of all the grand jury*) good and lawful men of the county of *Middlesex*, then and there sworn and charged to inquire for our said lord the king for the body of the said county, It is presented in manner and form as followeth, to wit, *Middlesex*. The jurors, &c. (*here insert the indictment verbatim*) whereupon the sheriff of the said county of *Middlesex* is commanded, that he cause the said *A. B.* to come to answer, &c. And afterwards, to wit, at the same session of *oyer and terminer* of our said lord the king, holden at the *New Sessions-house on Clerkenwell-green* afore said, in and for the said county of *Middlesex*, by adjournment, on *Wednesday* the day of the same month of in the * year afore said, before the said justices of our said lord the king, above-named, and other their fellows afore said, cometh the said *A. B.* in his own proper person, and having heard the said indictment read, the said *A. B.* saith, that he is not guilty thereof, and concerning thereof he putteth himself upon the country; and ——— *Selby*, esq. clerk of the peace for the county afore said, who prosecutes for our said lord the king on this behalf, doth the like; therefore let a jury thereupon come before the justices of our said lord the king, at the next session of *oyer and terminer* of our said lord the king, to be holden at the *New Sessions-house on Clerkenwell-green* afore said, in and for the said county of *Middlesex*, by whom the truth of the matter may be better known, and who have no affinity to the said *A. B.* to recognize, upon their oath, if the said *A. B.* be guilty of the premises afore said or not; because as well the said ——— *Selby*, who prosecutes for our said lord the king in this behalf, as the said *A. B.* have put themselves on that jury, the same day is given as well to the said ——— *Selby*, esq. who prosecutes for our said lord the king in this behalf, as to the said *A. B.* at which said next session of *oyer and terminer*, to wit, at the session of *oyer and terminer* of our said lord the king, holden at the *New Sessions-house on Clerkenwell-green* afore said, in and for the said county of *Middlesex*, on *Monday* the day of in the said year of the reign of our said lord the king, before *W. M.* esq. Sir *J. H.* knight, *W. H.* and *J. S.* esqrs. and others their fellows, justices of our said lord the king, assigned by letters-patent of our said the lord the king, under his great seal of *Great-Britain*, to the same justices last above-named, and others, and any four or more of them directed, to inquire more fully the truth, by the oath of good and lawful men of the said county of *Middlesex*, * and by other ways, means, and methods, by which they should or might better know (as well within liberties as without) by whom the truth of the matter may be better known of all treasons, misprisions of treasons, insurrections, rebellions, counterfeitings, clippings, wathings, false coinings, and other falsities of the money of *Great-Britain*, and other kingdoms or dominions whatsoever; and of all murders, felonies, manslughters, killings, burglaries, rapes of women, unlawful meetings, conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenance, oppression, champerties, deceits, and all other evil doings, offences, and injuries whatsoever; and also of the accessaries of them, within the county

Names of the grand jury.

Indictment.

Adjournment day.

[* 83]

Party appears and pleads not guilty.

Further day, &c.

Caption of the adjourned session at which the party was tried.

[* 84]

Second appearance.

Names of the petit jury.

Guilty.
[* 85]

Judgment.

Fine.

Commitment.

county aforesaid (as well within liberties as without) by whomsoever, and in what manner soever, done, committed, or perpetrated, and by whom or to whom, when, how, and after what manner; and of all other articles and circumstances concerning the premises, and every of them, or any of them, in any manner whatsoever; and the said treasons and other the premises to hear and determine according to the laws and customs of *England*, cometh as well the said — *Selby*, who prosecutes for our said lord the king in this behalf, as the said *A. B.* in his own proper person; and the jurors of that jury, by *T. N.* esq. and *I. B.* esq. sheriff of the said county of *Middlesex*, to this matter impannelled and returned, to wit, (*the names of the petit jury*) being called, come, who being chosen, tried, and sworn to speak the truth of and upon the premises in the indictment aforesaid, above specified, do say, upon their oath, ^a that the said *A. B.* is guilty of the trespasss and offence aforesaid, in the indictment aforesaid, above * specified, in manner and form as by the said indictment above against him is alledged: whereupon it is considered by the court here, that the said *A. B.* for the trespasss and offence aforesaid, in the indictment aforesaid, above specified, be taken, &c. which said *A. B.* being present here, is fined for the said trespasss and offence three shillings and four-pence, which he paid to the sheriff of the said county of *Middlesex*, in court here, to the use of our said lord the king, and the said *A. B.* is committed to the house of correction at *Clerkenwell*, in the said county of *Middlesex*, there to remain and be kept to hard labour for the space of six calendar months.

^a *On an acquittal.*

“ That the said *A. B.* is *not* guilty of the trespasss and offence aforesaid, in the indictment aforesaid, above specified, in manner and form as the said *A. B.* for himself by his plea hath alledged; whereupon it is considered by the court here, that the said *A. B.* of the trespasss and offence aforesaid, in the indictment aforesaid, above specified, be discharged, and go thereof without day.”

Record on the commission of the peace.

Note. If the offence be on the commission of the peace, you must say,

[* 86] Middlesex. *Be it remembered, that at the general (or general quarter) session of the peace of our sovereign lord the king, holden at the New Sessions-house on Clerkenwell-green, in and for the county of Middlesex, on the day of in the year, &c. before W M. K K. R R. and Z Z. esqrs. justices of our said lord the king, assigned to * keep the peace of our said lord the king in and for the county of Middlesex aforesaid, and also to hear and determine divers felonies, trespassses, and other misdeeds committed in the same county, by the oath of (the grand jury) to go on throughout the record; and instead of oyer and terminer, say, session of the peace; and of the words assigned by letters-patent, &c. say, assigned to keep the peace, &c.*

O F F I C E

OF THE

CUSTOS ROTULORUM.

The manner of appointing the Custos Rotulorum.

THE CUSTOS ROTULORUM is he that hath the keeping of the rolls or records of the sessions of the peace and of the commission of the peace. He is always a justice of the peace and *quorum* in the county where he hath his office; and by his office he is rather termed an ^a officer or minister than a judge, because the commission of the peace lays this special charge by express words upon him, *That he should cause the writs, precepts, process, and indictments, to be before him and his fellow justices, &c.* What he is,

Before the making of the statute 37 Hen. VIII. ch. 1. the lord chancellor of England for the time being had, by reason of his office, the nomination and appointment of the *custos rotulorum* within every *shire of England and Wales, and other the king's dominions, &c. and in like manner every person who enjoyed the office of *custos rotulorum* had till then of late the nomination and appointment of clerk of the peace within the shire where he enjoyed the said office of *custos rotulorum*; and sundry persons not learned in the law, nor able, for want of knowledge and learning, to occupy and exercise the said office of *custos rotulorum*, and of the clerkship of the peace, had by various means got, for the term of their lives, of the king's majesty, several grants, by his letters-patent to them made, of such clerkships of the peace; by reason whereof, and for that the parties to whom the said several grants had been so made not being sufficiently learned to execute their offices, many indictments, as well of felony, murder, and other offences and misdemeanors, and the process awarded upon the same indictments, had been frustrated and made void, sometimes by reason of the negligent engrossing and keeping of the said indictments, and sometimes by reason of the embezzling or rasure of the indictments; but also divers bargains and sales of manors, lands, and tenements, had and made between party and party, became frustrate and void, for want of sufficient enrolment thereof by the clerks of the peace, to the great hindrance of justice, and to the disinheritation of divers of the king's subjects: for reformation whereof, by the said stat. 37 Hen. VIII. ch. 1, it is enacted, *that no person shall be nominated and appointed to the said* and how formerly appointed.

[* 88]

Now nominated, &c. with the king's sign manual.

^a It is however said, that he is a man for the most part especially picked out, either for wisdom, countenance, or credit. 4 Black. Comm. 269.

office

Of the CUSTOS ROTULORUM.

[* 89]

who may nominate the clerk of the peace.

Provido.

[* 90]

When the place of such clerk is void, &c.

or if he misdeemean himself.

office and offices of custos rotulorum, within any shire of England, Wales, and other the king's dominions, &c. but such as shall have a bill signed with the king's hand for the same; which bill signed shall be a sufficient warrant, by the authority aforesaid, to the lord chancellor of England, and the lord keeper of the great seal, for the time being, to make from time to time commission or commissions, assigning and authorizing * thereby the same person to be custos rotulorum, until the king hath by another bill, assigned with his own hand, appointed and ordained one other person to have, occupy, and exercise the same office of custos rotulorum; and that the said person appointed and assigned to be custos rotulorum, as is aforesaid, shall and may occupy, exercise, and enjoy the same office of the custos rotulorum, by himself, or by his sufficient deputy, learned in the laws of this realm, and meet and able to supply the said office, according to the tenor of the said grant and commission. And further, that every custos rotulorum, for the time being, shall in every shire of this realm, Wales, and other the king's dominions, &c. nominate, elect, appoint, and assign, all and every person and persons which thereafter shall be clerks of the peace within any of the said shires of this realm of England, Wales, and other the king's dominions, &c. and to give and grant the said office and offices of clerkship of the peace to such able person, instructed in the laws of this realm, as shall be able to exercise and occupy the same, to hold and enjoy the same during the time that the said custos rotulorum should occupy and exercise the aforesaid office of custos rotulorum; so that the said clerk demean himself justly and honestly. And that it shall be lawful to every such grantee of the said clerkship to occupy and enjoy the same office of the clerkship of the peace by himself, or his sufficient deputy, instructed in the laws of this realm, so that the said deputy shall be admitted, taken, and reputed by the said custos rotulorum, to be sufficient and able to exercise, occupy, keep, and enjoy the same office of clerkship of the peace.

Provided, that the archbishop of York, the bishop of Durham, the bishop of Ely, and every of their successors, and all and every person or persons, corporations and bodies corporated, to whom the king's majesty or any of his noble progenitors, by his or their letters-patent, have given and granted any liberty and authority, or otherwise have authority by other lawful means or ways, * to ordain, make, and constitute any of the said officers of custos rotulorum, or clerk of the peace, within any county-palatine or other place, shall and may have and enjoy the same liberty and authority, according as they before had and enjoyed the same, any thing in the said act made to the contrary notwithstanding.

By 1 Will & M. Stat 1, ch. 21, § 5, The custos rotulorum, or other person to whom it shall belong to appoint the clerk of the peace, shall, where the office of clerk of the peace shall be void, nominate a sufficient person residing in the county or place to execute the same by himself, or his sufficient deputy, for so long time as such clerk of the peace shall well demean himself in his office.

If any clerk of the peace shall misdeemean himself in his office, the justices of the peace, in their general quarter sessions, or the major part of them, upon complaint in writing exhibited against him, may, upon examination, and due proof thereof, suspend or discharge him; and in such case, the custos rotulorum, or other person to whom of right it shall belong, shall appoint another person residing within the same county, &c. to be clerk of the peace in his room; and in case of neglect or refusal to make such appointment before the next general quarter session after such refusal, the justices of the peace,

Of the CUSTOS ROTULORUM.

peace, at their general quarter sessions, may appoint one. Provided always, That he shall be liable to all the penalties, conditions, &c. hereby mentioned and expressed, and may be discharged by the said justices as aforesaid.

No custos rotulorum, or other person to whom it doth or shall be long to nominate a clerk of the peace, shall sell the said place, directly or indirectly, upon the penalty that every custos rotulorum, or other person so selling, and every clerk of the peace so buying, shall be disabled to hold their places, and forfeit double the value of what shall be so given or taken, to be recovered by him or them that will sue for the same, to * their own use, by any action of debt, suit, bill, plaint, or information in any of their majesties courts at Westminster. [* 91]

Every clerk of the peace, before he enters upon his office, shall, in open sessions, take this oath, viz.

I A. B. do swear, that I have not nor will pay any sum or sums of money, or other reward whatsoever, nor have given any bond, or other assurance, to pay any money, fee, or profit, directly or indirectly, to any person or persons whomsoever, for such nomination or appointment.
So help me G O D.

Nothing in this act relates to the clerk of the peace for the duchy and county-palatine of Lancaster, County palatine.

The form of appointing a clerk of the peace by the custos rotulorum,

WHEREAS the office of clerk of the peace for the *West Riding* of the county of *Tork* is now vacant by the death of esq. late clerk of the peace of the said *Riding*; **KNOW**

ALL MEN by these presents, that the right honourable earl of *custos rotulorum* of the said *Riding*, hath nominated, constituted, and appointed, and doth hereby nominate, constitute, and appoint esq. a person skilful in the laws of *England*, and now inhabiting and residing within the same *Riding*, to be clerk of the peace of the said *Riding*; to have, hold, execute, and enjoy the office of clerk of the peace of the *Riding* aforesaid, by himself, or his sufficient deputy or deputies; and by himself, or such deputy or deputies, to have, receive, and take to the use of him the said all fees, wages, perquisites, * advantages, emoluments, and appurtenances whatsoever to the said office belonging, or in any wise appertaining, for and during so long time as the said shall well behave and demean himself in the said office.

In testimony whereof the said earl hath hereunto set his hand and seal, the day of in the year of the reign of our sovereign lord *George* the third, now king of *Great-Britain*, &c. and in the year of our Lord 1782. [* 92]

* T H E
D O C T R I N E
O F
I N D I C T M E N T S.

AS an introduction to the subsequent parts of this work, it may not be improper to say something concerning the body of an indictment, the several parts thereof, and the forms requisite therein.

An *indictment* is an accusation at the suit of the king, by the oaths of twelve men of the same county wherein the offence was committed, returned to enquire of all offences in general in the county, determinable by the court into which they are returned, and finding a bill brought before them to be true. 2 *Haw.* 209, 6th edit. 299.

But when such accusation is found by a grand jury, without any bill (a) brought before them, and afterwards reduced to a formed indictment, it is called a *presentment*. *Ibid.*

(a) So called before finding; but afterwards termed an indictment. 1 *Salk.* 376.

And when it is found by jurors returned to enquire of that particular offence only which is indicted, it is properly called an *inquisition*. *Ibid.*

A *presentment* is a more comprehensive term than *indictment*; for regularly an indictment is an accusation given in against a person by the grand * inquest for some misdemeanor, whereunto he is put to answer; but *presentments* not only include such indictments, but also some other informations whereunto the party is not put to answer; as *presentments* of *felo de se*, of *fugam fecit*, of *deodands*, of deaths *per infortunium*, and many others. 3 *Bac. Abr.* 91. 2 *H. H.* 152, 153.

1. Formerly every indictment was in *Latin*, and so were all pleadings in the courts of law; but now by stat. 4 *Geo.* II. ch. 26, & stat. 6 *Geo.* II. ch. 6, ^a all indictments, &c. are to be in *English*; to the end that they should be in a language capable of being known and understood by the parties concerned, whose lives and liberties may be affected thereby. 2 *H. H.* 169.

2. Figures to express numbers are ^b not allowable in an indictment; but numbers must be expressed in words. *Ibid.* 170.

3. An indictment, grounded upon an offence made by an act of parliament, must, by express words, bring the offence within the

^a This is extended to the courts in *Wales* by 6 *Geo.* II. ch. 14. § 3.

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DOCTRINE of INDICTMENTS.

substantial description made in the act of parliament, and those circumstances mentioned in the statute to make up the offence shall not be supplied by the general conclusion, against the form of the statute. *Ibid.*

4. And so it is if an act of parliament oust clergy in certain cases, as murder of *malice aforethought*, robbery *in or near the highway*, though * the offences themselves were at common law; yet, because at common law within clergy, they shall not be ousted of clergy, though convicted, unless these circumstances, as of *malice aforethought*, or *near the highway*, be expressed in the indictment. *Ibid.*

5. If a statute prohibit any act to be done, and by a substantive clause gives a recovery by action of debt, bill, plaint, or information, but mentions not indictment, the party may be indicted upon the prohibitory clause, and thereupon fined; but not to recover the penalty: but then it seems the fine ought not to exceed the penalty. *Ibid.* 171.

6. But if the act be not prohibitory, but only that if any person *shall* do such a thing, he shall forfeit so much, to be recovered by action of debt, bill, plaint, or information, then he cannot be indicted for it; the proceeding must be by action, bill, plaint, or information. *Ibid.*

7. If a man be indicted for an offence, which was at common law, and concludes *against the form of the statute*, but in truth it is not *brought* by the indictment within the statute, it shall be quashed, and the party shall not be put to answer it as an offence at common law. *Ibid.* *Vide* Cholmley's case, *Cro. Car.* 464.

* 8. As if a man be indicted for drawing his dagger in the church-yard upon *A. B.* against the form of the statute, *viz.* 4 *Edw.* VI. ch. 4, but omits these words, *with an intent to strike*, the indictment shall be quashed, and the party not put to answer the assault at common law upon the same indictment. 2 *H. H.* 171. *Vide* Church-yard, *post.*

9. So if men be indicted for a riotous and forcible entry, against the form of the statute, *viz.* 8 *Hen.* VI. ch. 9, and the statute is misrecited, they shall not be put to answer the offence at common law; but that indictment shall be quashed. *Ibid.*

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^a *Hawkins*, in his *Pleas of the Crown*, vol. ii. 251, § 118, 6th edit. 357, § 116, after saying that "if an indictment do not conclude contrary to the form of the statute, and the offence indicted be only prohibited by statute, and not by common law, it is wholly insufficient, and no judgment at all can be given upon it," he proceeds thus: "But if the offence were *also* an offence at common law, I take it to be in a great measure settled at this day, that judgment may be given as for an offence at common law, though the indictment conclude *contra formam statuti*." (a) In *The King* against *Smith* and *others*, Dougl. 1 edit. 425, who were indicted for obstructing the mayor and commonalty of the city of *London*, in making a horse towing-path on the soil of the river *Thames*, under powers vested in them by certain statutes, and which the indictment partly recited, but concluded as at common law, and judgment being had for the king, it was contended on a motion in arrest of judgment, that the indictment should have concluded contrary to the form of the statute. But Mr. Justice *Ashurst* observing that it was an offence at common law (b) to obstruct the execution of an act of parliament, this objection was abandoned; and Mr. Justice *Buller* there said, that the point was very properly given up, as the indictment would have been wrong if it had concluded *contra formam statuti*.

(a) *Vide post*, § 78, 79.

(b) It is also said, that disobedience to an order of justices is an offence at common law. Cowp. 650.

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DOCTRINE of INDICTMENTS.

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DOCTRINE of INDICTMENTS.

11. If an act of parliament making an offence be but temporary, and made perpetual by another statute, the indictment concluding *against the form of the statute* is good. *Ibid.* 173. *Vide post*, § 85, 86, 87, 88.

12. If there be several offenders that commit the same offence, though in law they are several offences, in relation to the *several offenders*, yet they may be joined in one indictment, as if several commit a robbery, or burglary, or murder. *Ibid.* *Vide post*, § 22, 89.

[*97]

* The requisite parts in an indictment are,

The name and addition of the indicted.

The day and year of committing the offence.

The parish, precinct, hamlet, or place where committed.

Upon or against whom committed.

The manner of doing it.

The fact itself, and the nature of it.

The conclusion.^a [See the table of contents.]

As to the name and addition of the party indicted.

13. This regularly ought to be inserted truly in every indictment; but if the party be indicted by a wrong Christian name, surname, or addition, and he plead to that indictment *not guilty*, or answer to that indictment upon his arraignment by that name, he shall not be allowed after to plead a *misnomer*, or falsity of his addition; for he is concluded and estopped by his plea by that name. 2 *H. H.* 175.^b

14. But he that will take advantage of the misnomer of his Christian name, surname, or addition, must do it upon his arraignment. *Ibid.*

15. The misnaming of the surname of the offender in an appeal is a good plea in abatement; but though the surname be mistaken in an indictment, yet it shall not abate. *Ibid.*

16. But the mistake of the Christian name is pleadable as well on an indictment as on an appeal, and the party shall be dismissed from the indictment: but then the party must plead his true Christian name, by which he may be indicted *de novo*, and the grand jury may find another bill. 2 *H. H.* 176.^c [See *Major Semple's case*, *Le. Cr. Ca.* 355.]

[*98]

17. By stat. 1 *Hen. V.* ch. 5, in all indictments, &c. the party indicted ought to have the addition of his mystery, degree, place, and county. *Ibid.*

18. If a party be indicted without an addition, or a false one, and upon that indictment outlawed, he may avoid the outlawry by writ of error. 2 *H. H.* 176.

^a For further information under all these heads *vide* 2 *Haw.* 224, 6th edit. 319.

^b *Vide* Pleas under Practice of Sessions, *ante*, No. 9, 10.

^c The addition ought to be the prisoner's substantive name, not to the *alias dictus* only; as *A. B.* otherwise *A. C.* butcher; because regularly the addition refers to the last antecedent. 2 *H. H.* 177. 2 *Haw.* 231, 6th edit. 328, 329. But it is said not to be material whether any addition be put to the name which comes under the *alias dictus* or not. *Ibid.*—It is in the latter laid down, that the want of addition to the first name of one, where several are indicted, vitiates the whole: but 2 *H. H.* 177, says, it shall be quashed only as to him whose name is omitted; for they are in law as several indictments. *Vide post*, § 92, &c.

DOCTRINE of INDICTMENTS.

19. But although there be no addition, yet if he appear and plead *not guilty*, without taking advantage of that defect, the indictment is affirmed, and the want of addition salved. *Ibid.*

20. Single woman is a good addition; so is widow; so is the wife of J. S. of, &c. *Ibid.* 177.

21. An indictment against a peer of the realm is good without an addition; because no process of outlawry lies against him. *Ibid.*

But as to the outlawry, this is contradicted in the same book, (a) *Vide Cro. Eliz.* 170, 503.

199. (a)

22. An indictment against inhabitants of a town for not repairing a highway is good without naming any person in certain. 2 *Harw.* 350, 6th edit. 327, 328.^a

* Touching the time, to wit, the year and day wherein the fact was committed. [* 99]

23. Though the day be inserted, if the year be omitted, the indictment is insufficient. 2 *H. H.* 177.

24. If a man be indicted, for that he on the first day of April, in the sixth year, &c. with force and arms did make an assault upon K. D. and him did beat, and says not *then and there did beat*, yet this hath been held good; for the *force and arms, day and place*, named in the beginning, refer to all the ensuing acts. *Ibid.* 178. *Vide post*, § 33.

25. But in an indictment of felony, there must be *then and there* to the stroke, or to the robbery, and the day and place of the assault is not sufficient; and this is in favour of life: therefore it is usual to repeat the *then and there* to the several parts of the fact, as robbery from the person, &c. *Ibid.*

26. If K. D. be indicted, for that he, on such a day and year, at such a place, having in his right hand a certain sword, &c. did strike R. and it is not said then and there did strike, this is ill; because the day and year, and place, relate only to the having the sword, not to the stroke. *Ibid.* b

27. In an indictment for murder, or manslaughter, the day and place of giving the stroke, or other * act inducing the death, and also the time of the death, must be expressed; the former, because the forfeiture of lands relates thereto; the latter, because it must appear that the death was within the year and day after the stroke, &c. 2 *H. H.* 179.

[* 100]

28. Where the time of the day or night is material to ascertain the nature of the offence, it must be expressed in the indictment; as an indictment for burglary ought to say on such a day, *about the hour of* in the night of the same day, feloniously and burglariously did break and enter. *Ibid.*

* A presentment under 13 Geo. III. ch. 78, § 24, against a smaller district than a parish, must state expressly how they are liable to the repair of roads. *The King* against *The Inhabitants* of the hamlet of *Penderryn*, 2 Term Rep. 513.

The presentment in the above case (amongst other things) stated, "that the inhabitants of the parcel or hamlet of *Penderryn*, in the said parish of *L.* the said common highway, so in decay, ought to repair, &c."

Error for not shewing in an indictment on what account, or by what obligation, the inhabitants of a division in a parish ought to repair the part of the highway indicted, *Cr. Cir. Aff.* 227. *Vide* also 5 *Bur.* 2700, and *Rex v. The Inhabitants* of that part of the parish of *Weston under Penyard* which lies in the county of Gloucester, 4 *Bur.* 2507.

* *Vide* Cotton's case, *Cro. Eliz.* 738.

DOCTRINE OF INDICTMENTS.

29. So upon breaking a house in the day-time, to oust the offender of clergy, upon stat. 39 *Eliz.* ch. 15, the indictment must express, *in the day-time*, (and it is usual to say about what hour the fact was committed), otherwise the indictment will not oust the party of clergy, though it may be otherwise a good indictment, so as to convict him of a felony within the benefit of clergy. *Ibid.*

30. Where an indictment charges a man with a bare omission, as the not scouring such a ditch, &c. it is said that it needs not shew any time. 2 *Haw.* 236, 6th edit. 335.

31. A conviction of deer-stealing setting forth the offence, between the 8th and 12th of July, &c. is sufficient. *Ibid.* 6th edit. 336. ^a

32. A mistake in not laying an offence on the very same day on which it is afterwards proved upon the trial is not material upon evidence. *Ibid.* 237, 6th edit. 335. *Vide post*, § 35.

The parish, precinct, hamlet, or place where a felony is committed, must be expressed in the indictment.

[* 101] 33. *Middlesex* in the margin. The indictment supposing a fact done at the parish of St. Clement * Danes, in the county aforesaid, is good, for it refers to the county in the margin. 2 *H. H.* 180. ^b *Vide ante*, § 24.

34. But if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at S. in the county aforesaid, vitiates the indictment, because two counties are named before, and therefore it is uncertain to which it refers. *Ibid.*

35. A mistake of the place in which an offence is laid will not be material upon evidence on not guilty pleaded, if the fact be proved at some other place in the same county. 2 *Haw.* 237, 6th edit.

337. [*Vide doctrine under Larceny*, § 14, *post*.]

As to the name of the person upon whom an offence is committed.

36. An indictment of murder of a certain person to the jurors unknown is good, and so for stealing goods, &c. of a certain person unknown. 2 *H. H.* 181.

37. If K. dies, and L. opens the grave where K. is buried, and steals the shroud, the indictment cannot suppose the goods to be of the dead man. but of the executors, administrators, or ordinary, as the case happens. *Ibid.* ^c

[* 102] 38. If K. deliver goods to L. a common carrier, to carry for him, and L. is robbed, the indictment may suppose them to be the goods of K. or the goods * of L. as the prosecutor pleases; for L. hath a kind of special property, because chargeable for them. *Ibid.*

There is no need of an addition of the person robbed or murdered, unless there be a plurality of persons of the same name; neither then is it essential to the indictment, though sometimes it may be convenient, for distinction sake, to add it; for it is sufficient if the indictment be true, viz. that J. S. was killed or robbed, though there are many of the same name. *Ibid.* 182.

^a *Vide* 1 Lord Raym. 582.

^b *Vide* Wingfield's case, Cro. Eliz. 739. So it is as to a declaration, though there be two counties mentioned in it. *Sutton v. Fenn.* 3 Will. 339.

^c Taking up dead bodies, though for the purpose of dissection, is an indictable offence. 2 Term Rep. 733.

DOCTRINE of INDICTMENTS.

As to the thing wherein, or of which, the offence is committed, certainty is requisite in an indictment.

39. An indictment against a man for that he is a common thief, or common champertor, conspirator, common malefactor, or common robber, &c. cannot be good, because every indictment ought to contain the particular matter wherein the offence was committed. *Ibid.*

40. But *common barrator, and disturber of the peace of our lord the king, and a sower of strife*, &c. is good, because barratry is an offence known in law, and consists of divers particulars; and the rest that are added thereunto are but aggravations of the offence, for barratry itself is a crime. *Ibid.*^a

41. Also an indictment against one for being a common scold is good without setting forth the * particulars. 2 *Haw.* 227, 6th edit. [* 103]
323. Nor is it necessary to *prove* the particular expressions used; it is sufficient to prove generally that she is always (as the report says) scolding. 1 *Term Rep.* 754.

42. An indictment against a man for that he feloniously took and carried away goods and chattels of another, without mentioning the particular, *viz. one horse, one ox, &c.* will not be good. 2 *H. H.* 182.

43. The number of things stolen must be expressed in the indictment; for it is not sufficient to say, *feloniously did steal sheep*, without expressing the number. *Ibid.*

44. The value of any thing stolen must be set down in the indictment, to the end that it may appear, whether the offence be grand or petit larceny. *Ibid.* 183.

45. The same, or rather greater, certainty is required in an indictment for goods; for what will be a defect of certainty in a count will be much more defective in an indictment. *Ibid.*

The fact and the nature of it, must be certainly set down in an indictment in apt words.

46. An indictment against *A.* for that he *feloniously did lead away a horse*, without saying *take*, is not good. *Ibid.* 184.

47. An indictment of a rape, for that the defendant *feloniously and carnally did know*, without the word *ravish*, will not be good, though it should conclude against the form of the statute. *Ibid.*

48. If *A.* be indicted that he did *feloniously, &c. shoot off a gun, &c. against B. giving to him a mortal * wound*, without saying *did strike*, the indictment is not sufficient. 2 *H. H.* 184. [* 104]

49. An indictment of felony must always alledge the fact to be done *feloniously*. An indictment for burglary must lay the offence "*feloniously and burglariously did break and enter.*" High treason must be laid to be done *traiterously*; petit treason, *feloniously and traiterously*; for though a party be acquitted of petit treason, he may

^a The words *contra pacem* are essentially necessary in an indictment for this offence. *Palfrey's Case, Cro. Jac.* 527. And though the indictment is good in a general form with these words, yet it has always been held that the prosecutor must give the defendant notice, before the trial, of the particular instances of the offences that are meant to be proved. *1 Anson v. Stuart, 1 Term. Rep.* 754. *Vide 2 Haw.* 226, 227.

^a But under 9 *Geo.* 1. ch. 22, it need not be so. See the precedents for shooting at a person in a dwelling-house, title *Black Act, post.*

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be convicted of murder or manslaughter. *Ibid. Vide post, § 71, 102, 103.*

50. If a man be indicted that *he did steal a horse*, for want of the word *feloniously*, it is but a trespass. *Ibid.*

51. An indictment of murder or manslaughter hath these certainties and requisites to be added to it, more than other indictments; for it must not be only *feloniously*, and ascertain the time of the act done, but must also,

52. Declare how and with what it was done, *viz. with a certain sword, &c. Ibid. 185.*

53. Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poisoning or strangling, it doth not maintain the indictment upon evidence. *Ibid.*

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54. If *A. and B.* are indicted for murder, and it is said that *A.* gave the stroke, and *B.* was present, aiding and abetting, yet if it fall out upon evidence, that *B.* gave the stroke, and *A.* was present, aiding and abetting, it maintains the indictment^b: * so if *A.* be indicted for poisoning *B.* the sort of poison must be alledged; but if *B.* be poisoned with another sort of poison, yet it maintains the indictment, for the kind of death is the same. 2 *H. H.* 185.

55. If a man be indicted for the murder of another with a sword, pistol, &c. the indictment must set forth *in which hand the defendant held the weapon*, though mistaking the hand will not vitiate.

56. For example; if an indictment runs thus, *that with a certain sword which he held in his right did strike*, without saying in his right hand, for this cause an indictment hath been quashed. *Ibid.*

57. The weapon is a deodand forfeit to the king; therefore the value should be set down in the indictment. *Ibid.*

58. The indictment must shew in what part of the body the wound was given. *Ibid.*

59. The length and depth of the wound should be set forth. *Ibid. 186.*

60. But though the manner and place of the hurt, and its nature, be requisite as to the formality of the indictment, and it is fit to be done as near the truth as may be, yet if, upon evidence, it appear to be another kind of wound, in another place, if the party died of it, it is sufficient to maintain the indictment. *Ibid.*

61. It is usual to alledge *the party stricken to have been in the peace of God and our lord the king*; but it does not seem absolutely necessary to be inserted. *Ibid.*

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62. It is necessary to alledge, in fact, that the party wounded died of the wound, and also the * time and place, as well of the death as of the wound given, that it may appear the party died within the year and day of the wound; as thus, *of which said mortal wound he the said A. B. then and there instantly died*; or, *of which said mortal wound he the said A. B. from such a day*, (the day of giving the wound) *until such a day did languish, and languishing*

^b In *Foster*, 351, the same doctrine is laid down; where it is said, that all the parties may be found guilty of murder or manslaughter at common law, as circumstances may vary the case; for the identity of the person supposed to have given the stroke is but a circumstance, and in this case a very immaterial one, as the stroke of one is, in the consideration of law, the stroke of all; but that in a prosecution on the statute of stabbing, it is otherwise. *Vide also 1 H. H. 437, 463; 2 H. H. 344. 345; and Foster's Discourses on homicide and accomplices.*

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dia live, on which day he the said A. B. of the said mortal wound, died. 2 H. H. 186.

63. Although, as well in an indictment of manslaughter as murder, the stroke is alledged to be *mortal bruise or wound*, and *given feloniously*, yet in case of murder there is somewhat more to be said, or otherwise it will amount to no more than manslaughter, and the offender will have his clergy; for the special words in the indictment of murder are, 1st *of malice aforethought*; 2d. *did murder*; and though the words *did murder* be in an indictment, yet, for want of the words *of malice aforethought*, the offender will have his clergy. *Ibid.* 186. 187,

64. An indictment of treason for counterfeiting the king's coin ought to shew particularly what *kind* of coin, to wit, shillings, &c. *Ibid.* 187.

65. An indictment of high treason, for conspiring the death of the king, ought not only to contain the compassing or conspiring to do the act, but must also set down an overt act in pursuance thereof. *Ibid.*

66. As in all indictments of felony there must be *feloniously*, and of treason there must be *traiterously*, so it must be laid to be done *with force and arms*. *Ibid.* Vide § 97.

67. If the conclusion of an indictment for murder, where the stroke is supposed to be given at one day or place, and the death happens at another day or place, be, *and so feloniously, wilfully, and of malice aforethought, the aforesaid A. B. the said * B. C.* (at the day and place when and where the stroke was given) *did kill and murder*, this will not be good; because though the stroke is the offence and cause of the death, yet it is neither murder nor manslaughter till the party die. 2 H. H. 187, 188. Vide Heyden's case, 4 Co. Rep. 41. ^a

68. Regularly every indictment ought to conclude, *against the peace of our lord the king, his crown and dignity*. *Ibid.* 188. Vide § 98, 99.

69. If an offence be supposed to be begun in the time of one king, and continued in the time of his successor (as a nuisance), it must conclude *against the peace of both kings*. *Ibid.* 189. But to alledge an offence to have been committed in the time of the late king, and charge it to be against the peace of the now king, is fatal. 3 Bur. 1903. Vide post, § 98. Vide also the first precedent under Bankrupt, post.

70. If an offence be newly enacted, or made an offence of a higher nature by act of parliament, the indictment must conclude, *against the form of the statute*; as an indictment for buggery, transporting of wool, &c. *Ibid.* Vide also Rex & Regina v. Clerk, Salk. 370.

^a For a precedent where the strokes were given in one parish, and the death happened in another parish, in the same county, vide Cr. Aff. 471.

By 26 Hen VIII. ch. 6, murder in Wales may be enquired of in an adjacent English county; but appeals must still be brought in a proper county. 1 Harw. 80, 6th edit. 121. Offences committed in North Wales are triable in Shropshire. *Ibid.* latter edit. 220.

At the trial of one Webb, and several others, at Hereford summer assizes, 1782, for stealing from a ship stranded in Glamorganshire, an objection was made by the prisoner's counsel, that Herefordshire was not the next English county; but was over-ruled by the judge, and Webb was convicted and executed. See the indictment, Cro. Cir. Aff. 510.

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* 71. If an offence was high treason, &c. at common law, and an act of parliament afterwards declares it so, as the stat. 25 *Edw. III.* stat. 5, ch. 2, of treasons, the stat. 3 *Hen. V.* ch. 7, of clipping the coin, &c. till repealed by 1 *Mar.* stat. 1, the indictment is good, with or without concluding, *against the form of the statute.* 2 *H. H.* 189.

72. An indictment for clipping, washing, &c. of coin, enacted to be treason by the statutes 5 *Eliz.* ch. 11, and 18 *Eliz.* ch. 1, must not only express as the statute requires (*for wicked lucre and gain-fake*), but must conclude, *against the form of the statute.* *Ibid.* 189, 190.

73. If an offence was felony at common law, but a special act of parliament ousts the offender of some benefit that the common law allowed him, when certain circumstances are in the fact, though the body of such indictment must express those circumstances according as they are prescribed in the statute, yet the indictment must not conclude, *against the form of the statute.* *Ibid.* 190.

74. Thus on the stat. 21 *Jac. I.* ch. 27, concerning murdering of bastard children, the indictment must shew that it was a bastard child, to bring the offender within the statute; but concludes not *against the form of the statute.* *Ibid.* ^a

75. So by the statute of 8 *Eliz.* ch. 4, in cases of pick-pockets; 39 *Eliz.* ch. 15, breaking houses in the day-time, and stealing to the value of five shillings; the statute of 23 *Hen. VIII.* ch. 1, in cases of ^b *petit treason*, wilful murder of malice prepense, robbing in or near the highway; 18 *Eliz.* ch. 7, in case of ^c *burglary*; the statute of 4 & 5 *Phil. & Mar.* ch. 4, in case of malicious commanding, &c. any person to commit murder, robbery, wilful burning, the offenders are ousted of their clergy, the body of the indictment must bring them within the express purview of the statutes, or otherwise they shall have the benefit of clergy; but it need not conclude contrary to the form of the statute; neither is it usual in such cases; for they were felonies before, and the statutes do not give them a new punishment, nor make them to be crimes of another nature, but only in certain cases take away clergy. 2 *H. H.* 190.

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76. But yet if they should conclude in these cases, contrary to the form of the statute, it would not vitiate the indictment, but would be only surplusage. *Ibid.*

77. It is said that an indictment upon the statute of 1 *Jac. I.* ch. 8, ousting persons of clergy, in the case of stabbing, the other party not having, &c. may conclude as at common law, or contrary to the form of the statute; but the latter is the most usual, and therefore recommended as the better way. *Ibid.* 190, 191; and so is the indictment under the title *Murder*, hereafter.

78. If an offence be at common law, and also prohibited by statutes, it is said that the indictment may conclude contrary to the form of the statute or statutes. Thus in *barratry*, though there be no direct statute against it by that name, yet the general tenor of the several acts running against it by circumlocutions, the indictment concluding contrary to the form of the statute, or divers statutes, is

^a *Vide tit. Bastardy, post.*

^b Indictment for murder and petit treason, by shooting, *viz.* against the person who shot, and the widow of the deceased, for aiding and assisting. *Cr. Cir. Aff.* 456.

^c Not so on 12 *Ann.* stat. 1, ch. 7, § 3. See *Cr. Cir. Aff.* 27.

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good. *Ibid.* 191, *Burton's case. Cro. Eliz.* ^a 148. *Vide post*, § 85, 86, 87, 88.

* 79. If an offence be at common law, and also prohibited by statute, with a corporal or other penalty, yet it seems the party may be indicted at common law; and then, though it conclude not *against the form of the statute*, it stands as an indictment at common law, and can receive only the penalty that the common law inflicts in that case. *Ibid.* So if perjury be committed, that is, within the stat. 5 *Eliz.* ch. 9, but concludes not *against the form of the statute*, yet it is a good indictment at common law, but not to bring him within the corporal punishment of the statute. 2 *H. H.* 191, 192. *Vide ante*, § 7.

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80. If a statute only make an offence, or alter an offence from one crime to another, as stealing lead fixed to a dwelling house, &c. from a misdemeanor to felony, by stat. 4 *Geo.* II. ch. 32, the indictment for such new-made offence, or new-made felony, must conclude *against the form of the statute*, otherwise it is insufficient. *Ibid.* 192. *Vide Lead*, hereafter.

81. And if an offence be purely at common law, if the indictment conclude, *against the form of the statute*, it may be quashed, except in the instances before given touching clergy. *Ibid.* 192. *Vide ante*, § 75, 76.

82. An indictment charging a man disjunctively is void; as, that *A. murdered B. or caused to be murdered*; or that *A. forged such a deed, or caused to be forged.* 2 *Haw.* 225, 6th edit. 321.

83. An indictment must be positive, and not by way of recital, or with a *That whereas*, &c. *Ibid.* 227, 6th edit. 323.

84. When one material part of an indictment is repugnant to another, the whole is void; as in an indictment against *A.* for forging a writing, whereby *B.* is bound to *C.* which is impossible if the writing be forged; or in an indictment for disseising *A.* of lands, when it appears by the indictment that *A.* had no freehold whereof he could be disseised. 2 *Haw.* 228, 229, 6th edit. 325, 326.

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Some additional observations.

85. If there are more statutes than one concerning the same offence, and the first of them was never discontinued, but only continued or qualified in the method of proceeding, without any alteration in the substance of the purview, the proper conclusion is contrary to the form of the *statute.* *Dingley v. Moor, Cro. Eliz.* 750.

86. But if an act be made perpetual, with a new addition, an indictment or information on them must conclude contrary to the form of the *statutes*; as in the case of an indictment for recusancy on the statutes of 1 *Eliz.* ch. 1, and 23 *Eliz.* ch. 1. *Ibid.* *Vide Andrews v. Hundred de Lewkner, in com. Oxon. Telv.* 116. *Cro. Jac.* 187.

87. In pleading, if there are two or more statutes which give several punishments, and the party states that the plaintiff acted contrary to the form of the *statute*, without shewing which of them, it is ill. *Cro. Eliz.* 187.

88. So an information for not coming to church by such a time,

^a But it seems the practice is to conclude without either. See the precedent under title *Barratry*, hereafter.

contrary

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contrary to the form of the *statute*, is ill, because there are three *statutes* in this case. *Broughton v. Moore, Cro. Jac. 142.*

Touching the joining of several persons and offences in one indictment.
Vide doctrine under Larceny, post, § 14, 15.

[* 112] 89. If there be one offender, and several capital offences committed by him, they may be all contained * in one indictment, as burglary and larceny. Larcenies committed of several things, though at several times, and from several persons, may be joined in one indictment. 2 *H. H.* 173.

90. If there be several offenders that commit that same offence, &c. *Vide ante*, § 12.

91. Several offenders may be joined in one indictment, though the offences are of several degrees, but dependent one upon another, as the principal in the first degree, and the principal in the second degree, *viz.* present, aiding and abetting the principal, and accessory before or after. 2 *H. H.* 173.

(a) *Vide Crepps v. Durden, Corp. 640.* as to exercising a trade on a Sunday. 92. But where the offence arises from a joint act, which in itself is not criminal, but may be so by reason of some personal defect peculiar to each defendant, as where divers follow a joint trade (a), for which the law requires a seven years apprenticeship, in which case each trader's particular defect, and not the joint act, makes him guilty, it seems most proper to indict them severally and not jointly; because each man's offence is grounded on a defect peculiar to himself. 3 *Bac. Abr.* 108. 2 *Haw.* 240, 6th edit. 342. 2 *H. H.* 174.

93. And for this reason indictments have been quashed for jointly charging several defendants for not repairing the streets before their houses, or for neglecting a day of fasting appointed by proclamation: and this is agreeable to the rule of law, as to bringing actions on penal statutes, wherein several defendants shall not be joined, except it be in respect of some one thing in which all are jointly concerned. 3 *Bac. Abr.* 108, and the authorities there cited. ^a

[* 113] 94. But yet where *A. B. C.* and *D.* were indicted for erecting four several inns *ad commune nocumentum*,* it was ruled, that for several offences of the same nature, several persons may be indicted in the same indictment; but then it must be laid *separaliter erexerunt*; and for want of the word *separaliter* the indictment was quashed. 3 *Bac. Abr.* 108. 2 *H. H.* 174

(a) 2 *H. H.* 174. 95. Also it is said in (a) *Hale* to be common experience, that twenty persons may be indicted for keeping disorderly houses or bawdy-houses; and they are daily convicted upon such indictments; for the word *separaliter* makes them several indictments. *Vide* 3 *Bac. Abr.* 108.

96. Several defendants cannot be joined in one indictment for perjury; for it is a separate act in each; and one may be desirous to have a *certiorari*, and the other not; and the jury on the trial of all may apply evidence to all, which is but evidence against one. *Str.* 921. So also in *Rex v. Clendon*, where two prosecutors were joined in the same indictment for an assault and battery, the court held they were distinct offences. *Str.* 870. 2 *Lord Raym.* 1572. *Bar. K. B.* 337. 2 *Seff. Cas.* 24. But in the case of *Rex v. Benfield and Saunders*, *E.* 33 *Geo.* 11. on an information against both for the same libel, it was held good, and the case of *The King v. Clendon*

^a *Vide* 2 *Bur.* 984.

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held not to be law; for cannot the ^a king call a man to account because he broke two heads instead of one? Lord Mansfield, 2 Bur. 984. Vide 2 Haw. 6th edit. 342.

* As to the words Force and Arms.

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97. At common law, the words *vi & armis* were necessary in indictments for offences which amount to an actual disturbance of the peace, as rescoues and assaults, &c. but it seems that they were never necessary where it would be absurd to use them; as in indictments for conspiracies, slanders, cheats, escapes, and such like; or for nuisances in the defendant's own ground, &c. 3 Bac. Abr. 108, 109. 2 Haw. 241, 6th edit. 343.

But however material these words might have been by common law, yet now it is enacted by ^b 37 Hen. VIII. ch. 8, "That the words *force and arms*, viz. with clubs, knives, bows and arrows, shall not of necessity be put in any indictment or inquisition, nor shall the parties indicted have any advantage in this respect by writ of error, plea, or otherwise, &c." *Ibid.*

Yet since this statute, exceptions to indictments of trespasss, and such like, for want of the words *vi & armis*, where they have not been implied by other words, as, *rescussit*, or *manu forti*, &c. have some time prevailed; and the necessity of them is said to be owing to this, that without them there can be no *capiatur* entered, nor fine to the king. 3 Bac. Abr. 109. 2 Lev. 221. 2 Haw. 241, 242, 6th edit. 344.

Yet, says Hawkins (a), they have been often over-ruled; and it is not easy to shew how they ever could prevail since the said statute, consistently with the manifest purport of it: however, it is certainly safe and advisable to make use of them where they * are proper and pertinent, if it be to no other purpose than to aggravate the offence. 3 Bac. Abr. 109. (a) 2 Haw. 242.

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Whether it be necessary to lay the words, against the peace, &c.

98. Inasmuch as all offences which are punishable by a public prosecution tend to the disturbance of the quiet and peaceable government of the king over his people, it seems a good general rule, that all indictments and criminal informations ought to conclude against the peace of the king or kings in whose reign or reigns the offence was committed. 3 Bac. Abr. 109. 2 Haw. 242, 6th edit. 345. Vide ante, § 68, 69.

Although an indictment concludes against the peace, yet if it be without "of our lord the king," it is insufficient. 2 H. H. 188; and it ought to conclude against the peace of our lord the king, though the offence should be for using a trade, not having served an apprenticeship; for every offence against a statute is against the peace, and ought to be so laid. 2 Lord Raym. 1034. 2 H. H. 188. Yet, per Hawkins, there are some precedents without this conclusion, but not warranted by any resolution. 3 Bac. Abr. 109. 2 Haw. 242, 243, 6th edit. 345.

^a But as to an action of trespasss, where the goods of several persons are taken at the same time, for one cause, vide 3 Lev. 355; and it was agreed, in Clendon's case above cited, that an action at the suit of two for such a battery would not lie.

^b But this extends not to declarations in trespassses, suits between party and party, or informations for the king, but only to indictments. 2 H. H. 187. But

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(a) Vide Salk.
381.

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But it is said that an indictment is good without this conclusion, where it is for a bare *nonfeasance* (a) as not performing the * order of justices of the * peace. 3 *Bac. Abr.* 109. *Vent.* 108, 111. And it seems clear from all the precedents, that neither an information ^b *qui tam* on a penal statute, nor an information by the king for an intrusion, or other wrong of a civil nature to his lands, goods, or revenues, require this conclusion. 3 *Bac. Abr.* 110. 2 *Haw.* 243, 6th edit. 346.

Whether it be necessary to lay the offence to be against the king's crown and dignity.

99. It is said in *Hawkins*, that the words *against the king's crown and dignity* are used in all the precedents in *Coke's Entries*, which lay the offence against the peace, yet that they are omitted in *Rastall's Precedents*; and it hath been resolved, that an indictment for a riot is good without them, nor can we find the contrary to have been adjudged any where. 3 *Bac. Abr.* 110.

It is also said in 2 *H. H.* 188, that an indictment need not conclude *against the king's crown and dignity*, though it be usual in many indictments: but it cannot be discovered, from any of the modern books of precedents, that any indictment has of late years been drawn without including those words.

Whether it be necessary to lay it in contempt of the king.

2 *Haw.* 244,
6th edit. 346,
347.

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100. The words, *in contempt of the king*, are sometimes used in indictments of superior courts, and * in informations of intrusion, and in actions upon statutes, and sometimes omitted; but there is no authority relating hereto, except in the year book of 4 *Hen.* VI. pl. 7, wherein it seems to be admitted, that it is necessary in an action on a statute. 3 *Bac. Abr.* 110.

Whether necessary to lay it to be unlawfully.

2 *Haw.* 244.

The word *unlawfully* has been adjudged not to be necessary in an indictment for a riot, because the fact indicted appears to be unlawful; and the same may be said to all other indictments at common law: but if a statute, in describing a thing prohibited, uses the word *unlawfully*, an indictment thereon is not good without it. 3 *Bac. Abr.* 110.

Whether a defect in any of these particulars be amendable.

101. It is clearly agreed, that none of the statutes of amendment extend to criminal prosecutions, and therefore no indictment can be amended in any case wherein an amendment is not allowable by the common law. 3 *Bac. Abr.* 110. Vide 2 *Haw.* 244, 6th edit. 347.

(b) Every indictment is *vi et armis, et contra pacem*, where an act is done against the commonwealth. *Cro. Car.* 378.

^a It is however the constant practice at this day to conclude all (b) indictments as against the peace of our lord the king; to which effect is the indictment in *Rex v. Robinson*, 2 *Bur.* 800, for refusing to obey an order of justices at a general quarter session: which case is recognized by the court in *Rex v. Balme & al. Corp.* 648, where it is fully established, that disobedience to an order of justices is an offence at common law.

^b For informations *qui tam*, vide *Information*, post. *Cr. Cir. Aff.* 500. 2 *Burn. Just.* title *Information*.

But

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But it is said that the body of an indictment from *London* may be amended, because by the city charters the tenor of the record shall be removed from thence. *Ibid.*

Also a coroner may by rule amend his inquest by the notes, in matter of form, before it is filed, and the ^a *caption*, of an indictment may, on motion, * be amended by the clerk of assize or of the peace, so as to make it agree with the original record, at any time during the term in which it came on, but not in a subsequent term. 2 *Haw.* 6th edit. 348.

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But it is said that the caption of an inquisition shall never be amended after it is filed; for being part of and drawn at the same time with the inquisition, greater exactness is required in it than in the caption of an indictment, which is left, as of course, to be drawn up as occasion shall require. 3 *Bac. Abr.* 111. 2 *Haw.* 244, 6th edit. 348.

Also it seems to be settled, that a discontinuance in a criminal prosecution is not amendable without ^b *consent*; but it is said that a mere misprision in the joining of an issue, as where the word *similiter*, &c. is omitted, is amendable at any time: also the direction of a *venire vicecomitibus* of *B.* which is returned by *J. S. vicecomiti*, may be amended on the oath of *J. S.* that there is but one sheriff of *B.* which is himself: also it is the common practice to amend criminal ^c informations and the pleadings thereon, whilst all is in paper. 3 *Bac. Abr.* 111. 2 *Haw.* 245, 6th edit. 348.

* It is also the common practice at this day, while the grand jury who found a bill is before the court, to amend it by their consent in matter of form; as the name or addition of the party, &c. *Ibid.* [For the rise and history of amendments, see the several authorities cited in 2 *Haw.* 6th edit.]

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As to high treason.

102. Meeting and consulting how to kill the king is an overt act of compassing. *Fost.* 195. *Vide 25 Edw. III. stat. 5, ch.*

Or how to depose or imprison him, or to get his person into the power of the conspirators. *Ibid.* 195, 196.

Inciting foreigners to invade the kingdom is an overt act in compassing. *Ibid.* 196.

Going into a foreign country for that end is an overt act. *Ibid.* 196, 197.

Levying war is an overt act of compassing, and, under some limitations, conspiring to levy war. *Ibid.* 197, 213.

2, for the declaration of offences which shall be adjudged high treason.

^a In the case of *The King* against *Atkinson* for perjury, the caption was amended in *B. R.* after the indictment was removed there by *certiorari*, by making it correspond with a session of *oyer and terminer* instead of a commission of the peace for the county of *Middlesex*.—Judgment for the king.—Error in parliament thereon, which was heard at the bar of the house of lords on the 1st day of *July* 1785, when the judgment was affirmed.—For the indictment, &c. taken from the printed proceedings in the house of lords, see *Cr. Cir. Aff.* 437 to 451.

^b An information was amended by striking out the word "*purport*," and inserting the word "*tenor*," by a judge at chambers the day before trial, upon hearing both sides, but without consent on the part of the defendant. *Rex v. Wilkes*, 4 *Bur.* 2527.

^c An information for killing a hare has been amended, in order that the prosecution might not be barred as to time, &c. 1 *Wils.* 163. A clerical mistake in a return to a *mandamus* may be amended after it has been filed. *Rex v. Lyme Regis*, *Dougl.* 1st edit. 130.

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So is adhering to the king's enemies. *Ibid.* 197, 217, 218.

Military weapons not necessary to make an insurrection amount to levying war. *Ibid.* 208.

Assemblies upon private quarrels do not amount to levying war. *Ibid.* 208, 209.

Vide Dougl. 1st edit. 569.

Nor do risings for effecting purposes of a private nature. *Ibid.* 210. But insurrections for a public and general concern do. *Ibid.* 210, 216.

It is a war levied, though no action ensues. *Ibid.* 218.

Attacking the king's forces is levying war. *Ibid.* 219.

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So is holding a castle or fort against the king or * his forces, if actual force be used to keep possession. *Ibid.*

Furnishing an enemy with money, &c. or sending money, intelligence, &c. though the money or intelligence should be intercepted, will amount to adhering. *Ibid.* 217, 218.

Cruising against the king's subjects, under a commission from a power at war with the king, is adhering. *Ibid.* 218.

Caption of a special *session* of oyer and terminer in *Surry*, and an indictment found thereat for high treason. *Ibid.* 3.

Vide 7 Ann. ch. 21, § 11.

A person indicted for high treason is entitled to a copy of the indictment, and lists of the witnesses for the crown, and of the jurymen who are to be returned on the pannel, *ten* days before his arraignment. *The King against Lord George Gordon, Dougl. 1st edit. 569.*^a

For the method of procedure on a trial at bar for high treason. *Ibid.*

Copy of the indictment not granted to a prisoner before trial in capital cases at common law. *Fost. 228, 229.*

But a prisoner upon his acquittal, in such case, is entitled to a copy of his indictment, which he must apply for in open court at the same general gaol delivery: and it is said that the court will not grant a copy where the acquittal arises from the incompetency of a witness. *Vide Brangan's case, Le. Cr. Ca. 26, 27.* Without applying for it in this way, the original record of acquittal produced by the clerk of arraigns will not be allowed as evidence at the trial of an action for a malicious prosecution; but it is otherwise in case the party had been indicted for a *misdemeanor*. * *Morrison v. Kelly, 1 Black. Rep. 385.* As to allowing copies of records in evidence, *vide Gil. L. Evid. 6.*

[* 121]

As to petit treason.

Clergy taken away by 23 *Hen. VIII. ch. 1; 25 Hen. VIII. ch. 3; and 4 & 5 Phil. & M. ch. 4.*

103. By 25 *Edw. III. stat 5, ch. 2*, the slaying of a master by his servant, of an husband by his wife, or a prelate by an ecclesiastic, who oweth faith and obedience to such prelate, are offences within this description.

An appeal of death will lie in this case. *Fost. 323.*

A pardon of murder pardons petit treason. *Ibid.* 324.

A person guilty of petit treason may be indicted of murder, for it is a species of murder. *Ibid.* 325, 328.

A person indicted of petit treason may be found guilty of murder, and acquitted of the treason. *Ibid.* 328, 329.^b

A wife

^a See the indictment in this case, *Cr. Cir. Aff. 290.*

^b A person indicted of petit treason and murder, combined in *one count*, may be found guilty of the murder, and acquitted of the treason; and an information

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A wife or servant joining with a stranger in the murder may be indicted in the same indictment. *Ibid.* 329.^b

Auterfoits acquit or *attaint* of petit treason or murder is a good bar to an indictment for the other. *Ibid.* 329.

Petit treason and murder the same offence, differing only in degree, though the law makes a * difference with regard to the ^b trial; [* 122] that is to say, it requires two witnesses in the former case. *Ibid.* 336, 337.

information before a justice, made by the deceased on oath, may be given in evidence on the trial, though the informant was not apprehensive of death, and though the information be signed by one witness only. *Henrietta Radbourn's case*, *Le. Cr. Ca.* 399.

^a *Vide Cr. Cir. Aff.* 456.

^b As 1 *Edw. VI.* ch. 12, § 22, expressly requires two witnesses upon an indictment and at the trial, as well in the case of petit as high treason, the reader will find ample information as to the trial of offences, the evidence required, and the judgment given in cases of treason, in 5 *Bac. Abr.* 148 to 156. *Vide Fost.* 337.

Some further information will be given occasionally under the following precedents.

[* 123] * P R E C E D E N T S

O F

I N D I C T M E N T S

F O R

Felonies, Trespaffes, and Misdemeanors.

Indictment for a Misdemeanor, in receiving stolen goods as Accessary, the principal Felon being unknown.

[* 124] **Middlesex.** **T**HE jurors for our lord the king upon their oath present, That *John Doe*, late of the parish of *St. Leonard, Shore-ditch*, in the county of *Middlesex*, labourer, and *Mary* his wife, being persons of evil name and fame, and of dishonest conversation, and common buyers and receivers of stolen goods, on the fifth day of *June*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one silver tankard, of the value of six pounds, of the goods and chattels of one *S. M.* by a certain ill-disposed person (to the jurors aforesaid yet unknown) then * lately before feloniously stolen of the same ill-disposed person, unlawfully, unjustly, and for the sake of wicked gain did receive, and have, (they the said *J. D.* and *Mary* his wife, then and there well knowing, and each of them well knowing, the said goods and chattels to have been feloniously stolen), to the great damage of the said *S. M.* against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

Indictment against an accessary to a felony or burglary before the fact.
After you have drawn an indictment against the principal felon, bring the charge against the accessary on the same piece of parchment, as follows :

AND the jurors aforesaid, upon their oath aforesaid, do further present, That *G. H.* late of the parish of *St. Mary Matfellow*, otherwise *Whitechapel*, in the county of *Middlesex* aforesaid, labourer, before the said felony^a and burglary was committed in form aforesaid, to wit, on the said ninth day of *December*, in the year aforesaid, with force and arms, at the parish aforesaid, in the

^a *If felony only, leave out the word burglary.*

county

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county aforesaid, did feloniously and maliciously * incite, move, procure, aid, and abet the said *A. B.* to do and commit the said felony and burglary in manner and form aforesaid, against the peace of our said lord the king, his crown and dignity.

* *Indictment against an accessory for receiving the principal felon.*

[* 125]

AND the jurors aforesaid, upon their oath aforesaid, do further present, That *J. K.* late of the parish of *St. Mary Matfellow*, otherwise *Whitechapel*, in the said county of *Middlesex*, labourer, well knowing the said *A. B.* to have done and committed the said felony and burglary in form aforesaid, afterwards, to wit, on the said ninth day of *December*, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, him the said *A. B.* did then and there feloniously receive, harbour, and maintain, against the peace of our said lord the king, his crown and dignity.

Indictment against an accessory for receiving stolen goods.

AND the jurors aforesaid, upon their oath aforesaid, do further present, That *L. M.* late of the said parish of *St. Mary Matfellow*, otherwise *Whitechapel*, in the said county of *Middlesex*, labourer, afterwards, to wit, on the tenth day of *December*, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, six brass candlesticks and four pewter dishes ^c, being parcel of the goods and chattels so as aforesaid feloniously and burglariously stolen, taken, and carried away, feloniously did receive and have (he the said *L. M.* then and there well knowing the said * goods and chattels last mentioned to have been feloniously and burglariously stolen, taken, and carried away), against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

[* 126]

Indictment against an accessory for receiving goods knowing them to be stolen, principal convicted in Surry, accessory indicted in Middlesex, after the principal convicted.

Middlesex. **T**HE jurors of our said lord the king upon their oath present, That at the delivery of the gaol of our lord the king of his county of *Surry*, holden at *Kingston* upon *Thames*, in and for the county aforesaid, on the day of in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. before *William* earl of *Mansfield*, lord chief justice of our lord the king, assigned to hold pleas in the court of our lord the king, before the king himself, and *Sir William Henry Ashurst*, knt. one of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, then justices of our said lord the king assigned to deliver the said gaol of the prisoners therein being, *M. T.* late of the parish of *Lambeth*, in the said county of *Surry*, labourer, was convicted in due form of law, for that the said *M. T.* on the twenty-fourth day of *December*, in the said twenty-second year of the reign of our said lord the king, with

^a *Instead of the words incite, move, procure, aid, and abet, you may say, counsel, hire, or command. Vide stat. 3 & 4 W. & M. ch. 9.*

^b *See stat. 5 Ann. ch. 31: but this was always felony at common law.*

^c *If he received all the goods, then say the goods and chattels abovementioned, to as, &c.*

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[* 127]

force and arms, at the parish aforesaid, in the county aforesaid, seventeen yards of linen cloth, of the value of thirty shillings, of the goods and chattels of one *T. W.* then and there being found, feloniously did steal, take, and carry away, against the peace of * our said lord the king, his crown and dignity, as by the record thereof, remaining filed in the said court of gaol-delivery, may more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, do further present, That *J. C.* late of the parish of *St. Martin* in the *Fields*, in the county of *Middlesex*, labourer, afterwards, to wit, on the said twenty-fourth day of *December*, in the year aforesaid, with force and arms, at the said parish of *St. Martin* in the *Fields*, in the county of *Middlesex* aforesaid, the goods and chattels aforesaid, so as aforesaid feloniously stolen, taken, and carried away, feloniously did receive, and have, (he the said *J. C.* then and there well knowing the aforesaid goods and chattels to have been feloniously stolen, taken, and carried away), against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.^a

None intreason.

1. In high treason there are no accessaries, neither before nor after; for the confenters, aiders, abettors, and knowing receivers and comforters of traitors, are all principals. 1 H. H. 613.

There are two sorts of accessaries in felony, the one before the felony committed, the other after.

Petit treason, murder, houses, and arson.

2. By stat. 4 & 5 Phil. & M. ch. 4, Every person that shall maliciously command, hire, or counsel any person or persons to commit or do any petit treason, wilful murder, or to do any robbery in any dwelling-house or houses, or commit or do any robbery in or near any highway, in this realm of England, or wilfully to burn any dwelling-house, or any part thereof, or any barn then having corn or grain in the same, shall not have clergy. Vide murder, post.

[* 128]
Privately from the person.
Horse-stealing.

* 3. Stat. 8 Eliz. ch. 4, For privately stealing from the person, extends not to any accessaries before or after.

4. By stat. 31 Eliz. ch. 2, § 5, It is enacted, that not only all accessaries before to horse-stealing, but also all accessaries after such felony, shall be deprived and put from all benefit of their clergy, as the principal is or ought to be by stat. 1 Edw. VI. ch. 12, or 2 & 3 Edw. VI. ch. 33.

Robbery in houses, shops, &c. to the value of 5s.

5. By stat. 3 Will. & M. ch. 9, § 1, Whoever shall comfort, aid, abet, assist, counsel, hire, or command any person or persons to break any dwelling-house, shop, or warehouse, thereunto belonging, or therewith used, in the day time, and feloniously take away any money, goods, or chattels, of the value of five shillings or upwards, therein being, although no person shall be within such dwelling-house, shop, or warehouse, being convicted or attainted, or being indicted and standing mute, or challenging peremptorily above twenty, shall be excluded from their clergy. Vide § 7.

Robbing any person.

6. And all and every person or persons that shall comfort, aid, abet, assist, counsel, hire, or command any person to rob another, shall likewise be excluded from the benefit of their clergy. Ibid.

Burglary.

7. Also, every person who shall counsel, hire, or command any person to commit any burglary, being thereof convicted or attainted, or

^a Touching the trial of an accessary in one county to a felony committed in another, see stat. 2 & 3 Edw. VI. ch. 24, § 4.—As to an appeal against an accessary, *ibid.* § 3.

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being indicted and standing mute, or challenging peremptorily above twenty, shall not have his clergy. Ibid. ^a

8. By stat. 10 & 11 Will. III. ch. 23, § 1, *All persons that shall assist, hire, or command any persons * privately and feloniously to steal any goods, wares, or merchandizes, in any shop, warehouse, coach-house, or stable, of the value of five shillings, shall be excluded from the benefit of clergy.* [* 129] Privately stealing in shops, &c.

9. *Those who are present, abetting and encouraging the doing any murder or rape, are principals in the highest degree, in respect of such abetment, as much as the person who does the fact.* 1 Haw. 82, 108. Murder and rape.

10. *Where a woman is taken away against her will, within the meaning of stat. 3 Hen. VII. ch. 2, though the receivers of the woman are principals, yet the receivers of those who took the woman are but accessaries, and those accessaries shall have the benefit of clergy, because it is after the fact; for stat. 39 Eliz. ch. 9, takes away the benefit of clergy from principals, aiders, and abettors before the fact only.* Taking women, &c.

11. *There are no accessaries in forgery, which is made felony, but all are principals.* Booth's case, Dalt. ch. 161. Moor, 666. Vide Forgery, post. None in forgery.

12. *A man may be an accessary to an accessary if he receive him, &c. knowing thereof.* 1 H. H. 622. Accessary to an accessary.

13. *None can be accessary in petit larceny.* 1 H. H. 616. Fost. 74. None in Petit

14. By stat. 3 & 4 Will. & M. ch. 9, § 4, *Buyers and receivers of stolen goods, knowing them to be stolen, are to be deemed accessaries after the fact, and suffer as such.*

15. *But because receivers often concealed principal felons, and thereby escaped being punished as accessaries,*

By 1 Ann. stat. 2, ch. 9, § 2, *Whosoever shall buy or receive stolen goods, knowing them to be stolen, may be prosecuted for a misdemeanor, and punished by fine and imprisonment, though the principal felon be not convicted.* Receivers though the principal not convicted.

And this will exempt them from being punished as accessaries, if the principal shall afterwards be convicted. Ibid. Exemption, &c.

16. But by stat. 5 Ann. ch. 31, § 5, *If any person shall receive or buy, knowingly, any stolen goods, or knowingly * harbour or conceal any felon, he shall be taken as accessary to the felon, and shall suffer as a felon; but this statute does not take away clergy.* Receivers of goods and felons. [* 130]

17. By stat. 4 Geo. I. ch. 11, *Receivers of stolen goods may be transported for fourteen years.* Transportation for fourteen years,

18. By stat. 29 Geo. II. ch. 30, § 1, *The buyer or receiver of stolen lead, iron, copper, brass, bell-metal, or solder^b fixed to or lying, or being in or upon houses, out-houses, &c. may be convicted, although the principal hath not been convicted, and shall be transported for fourteen years.* [See the title Lead hereafter] ^c Receivers of lead, &c.

^a Vide 39 Eliz. ch. 15, which takes away clergy from persons who shall rob any dwelling house, in the day-time, of the value of 5s. no person being therein; but does not mention accessaries.

^b So in the preamble, but not in the purview.

^c Buyers or receivers of stolen goods (except lead, iron, copper, brass, bell-metal, and solder), although the offence of the principal does not amount to grand larceny, &c. and although such principal be not convicted, &c. may be prosecuted for a misdemeanor, and be punished by fine, &c. 22 Geo. III. ch. 58, § 1.—See the Table to the Statutes, Cr. Cir. Ass. 529, 530, 535, 536; the Index to Le. Cr. Ca. titles *Accomplice* and *Stolen Goods*; the Index of 2 H. H. titles *Principal* and *Accessary*; and Fost. Table *Accessaries*.

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Of stolen jewels,
&c.

Triable as well
before as after,
&c.

Fourteen years.

19. And by stat. 10 Geo. III. ch. 48, *Every person who shall buy or receive any stolen jewel or jewels, or any stolen gold or silver plate, watch or watches, knowing the same to have been stolen, shall, in all cases where such jewel or jewels, or gold or silver plate, shall have been feloniously stolen, accompanied with a burglary actually committed in stealing the same, or shall have been feloniously taken by a robbery on the highway, be triable as well before conviction of the principal felon, whether he be in or out of custody, as after his conviction; and if such person so buying or receiving shall be convicted thereof, he shall be guilty of felony, and transported for fourteen years.*

20. A person who is accessory to a felonious ship-wreck is not within the 4 Geo. I. ch. 12, unless he belongs to the ship. *Pow's case, Le. Cr. Ca. 46.*

21. An accessory may controvert the guilt of the principal, notwithstanding the record of his conviction. *Smith's case, ibid. 263.*

* *Money is not within the meaning of the words goods and chattels, and therefore there cannot be an accessory after the fact for receiving it within the words of the statutes. Guy's case, ibid. 234.*

[* 131]

A L E H O U S E.

For keeping an alehouse without a licence.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. F.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, victualler, on the seventeenth day of *January*, in the twenty-second year of the reign of our sovereign lord *George* the third, now king of *Great-Britain*, &c. and at divers other days and times, as well before as afterwards, at the parish aforesaid, without any lawful authority, license, admission, or allowance of two justices of our said lord the king assigned to keep the peace in the county of *Middlesex*, did take upon himself to keep, and then and there did keep, a common alehouse, and in the same house then and there commonly and publickly did sell and utter, and did cause to be sold and uttered, ale and beer, to divers liege subjects of our said lord the king, in contempt of our said lord the king and his laws, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

By stat. 5 *Edw. VI.* ch. 25, *Licences were to be granted in sessions, or by two justices (quorum unus) but now,*

By stat. 2 *Geo. II.* ch. 28, & 26 *Geo. II.* 2 ch. 31, it is enacted, that from thenceforth no licence shall be granted to any person to keep a common inn or alehouse, but at a general meeting of the justices acting in the division where the person making application for * such licence dwells, to be holden for that purpose on the first day of September yearly, or within twenty days after, and not at any other time, except in cities and towns corporate.

[* 132]

Note. There are some books which tell us, that an indictment will not lie for keeping an alehouse without licence, because the statutes direct how the offenders are to be punished, viz. committing them, &c. 4 *Mod.* 144, *Trin. Term*, 4 *W. & M.* K. B.—*The king against Marriot.* Shower's Reports, p. 398. *Hill.* 8 *Will. III.* But the above is given, in case this doctrine should be over-ruled.

Statutes relating to alehouses are, 5 & 6 *Edw. VI.* ch. 25.—1 *Jac. I.* ch. 9.—4 *Jac. I.* ch. 4 & 5.—7 *Jac. I.* ch. 10.—21 *Jac. I.* ch. 7.

A S S A U L T.

—1 Car. I. ch. 4.—3 Car. I. ch. 3.—6 Geo. I. ch. 21.—
2 Geo. II. ch. 28.—9 Geo. II. ch. 23 & 35.—25 Geo. II. ch.
36.—26 Geo. II. ch. 13 & 31.—29 Geo. II. ch. 12.—30 Geo. II.
ch. 24.—5 Geo. III. ch. 46; and 9 Geo. III. ch. 6.

Thus stood the former editions as to alehouses; but the better Observations on
opinion seems to be that such indictment will not lie; yet being the foregoing
treated of differently by the reporters, it has been permitted to re- indictment.
main for further consideration, lest there should be some late deter-
mination in support of it undiscovered to the editor, who trusts the
following extracts will not be found inapplicable to the subject.

In *Comyn's Digest*, title *Indictment* (E), it is said that no indict-
ment lies for a thing prohibited by a statute which directs a particu-
lar method of prosecution, if it was no offence before; as for keep-
ing an alehouse without licence; and he gives the authorities thus:
“*per Hought. 2 Roll. 398. Pal. 388. R. in Joyce's case, Sho.*
399. Semb. Sho. 398, 399. R. Sal. 460. Mod. Ca. 86.—per 2
*J. ch. * Just. cont. 4 Mod. 144. Dub. per Holt, Comb. 405.”*

[* 133]

In *Stephens v. Watson, Mich. 13 Will. III. B. R. Salk. 45*, it is
also said, that before the 5 & 6 *Edw. VI.* it was lawful for any one
to keep an alehouse without licence, for it was a means of liveli-
hood which any one was free to follow, but if it was disorderly
kept, it was indictable as a nuisance; and that if a man keep an
alehouse without licence, he may be committed for three days by
the act, but he is not indictable, because the statute which makes it
an offence, has made it punishable in another manner.

By 5 *Geo. III. ch. 46*, persons selling ale, beer, or other exci-
table liquors, by retail, without licence (except in fairs, &c. ^a) incur
several penalties, viz. forty shillings, four pounds, and six pounds,
according to the first, second, or third offence, payable within cer-
tain limited times, upon conviction before one justice of the peace,
together with the costs and expences attending such convictions;
and the justice may commit them to prison if they refuse payment
thereof, there to remain for the first offence one month, for the se-
cond two, and for the third three months.

^a *Vide 1 Burn. Just. 15th edit. 22, 23.*

A S S A U L T.

Indictment for a common assault.

Middlesex. **T**HE jurors for our lord the king upon their oath
present, That *A. B.* late of the parish of *St. An-*
drew, Holborn, in the county of *Middlesex*, yeoman, on the first
day of *June* * in the twenty-first year of the reign of our sovereign
lord *George* the third, king of *Great-Britain*, &c. with force and
arms, at the parish aforesaid, in and upon one *J. H.* in the peace of
God and our said lord the king then and there being, did make an
assault; and him the said *J. H.* then and there did beat, wound,
and ill-treat, so that his life was greatly despaired of; and other
wrongs to the said *J. H.* then and there did, to the great damage of
the said *J. H.* and against the peace of our said lord the king, his
crown and dignity.

[* 134]

Indictment

Indictment for assaulting a constable in the execution of his office.

Common
assault.

[* 135]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. Dunstan* in the *West*, in the county of *Middlesex*, yeoman, on the first day of *May*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *J. W.* (then being one of the constables of the said parish of *St. Dunstan* in the *West*, in the said county of *Middlesex*, in the peace of God and our said lord the king, and in the due execution of his said office, then and there also being,) did make an assault; and him the said *J. W.* then and there did beat, wound, and ill-treat, so that his life was greatly despaired of; and other wrongs to the said *J. W.* then and there did, to the great damage of him the said *J. W.* and against the peace of our said lord the king, his crown and dignity. ^a And the jurors ^{*} aforesaid, upon their oath aforesaid, do further present, That the said *A. B.* on the said first day of *May*, in the year aforesaid, with force and arms, at the parish of *St. Dunstan* in the *West* aforesaid, in the county aforesaid, in and upon the said *J. W.* in the peace of God and our said lord the king then and there being, did make an assault; and him the said *J. W.* then and there did beat, wound, and ill-treat, so that his life was greatly despaired of; and other wrongs to the said *J. W.* then and there did, to the great damage of him the said *J. W.* and against the peace of our said lord the king, his crown and dignity.

^a In this and all cases of the like nature, it is necessary to add this count, that if it should not be proved that the prosecutor was in the due execution of his office, the defendant may be convicted for a common assault; for the jury may find only as to the latter count, if the former count is not fully proved; but, when it is fully proved, the jury finds the defendant guilty in general.

Indictment for an assault and false imprisonment.

[* 136]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *L.* in the county of *M.* yeoman, on the _____ day of _____ in the _____ year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *M. D.* in the peace of God and our said lord the king then and there being, did make an assault; and him the said *M. D.* then and there did beat, wound, and ill-treat, so that his life was greatly despaired of; and him the said *M. D.* then and there unlawfully and injuriously, against the will and without the consent of the said *M. D.* and also against the laws of this realm, without any legal warrant, authority, or justifiable cause ^{*} whatsoever, did imprison and detain for a long time, to wit, for the space of _____ hours then next following ^a; and other wrongs to the said *M. D.* then and there did, to the great damage of the said *M. D.* and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. [*Go on with another count for a common assault as before.*]

^a For

A S S A U L T.

^a *For the like, and obtaining five guineas for discharging.*

“And until he the said *M. D.* had paid to him the said *A. B.* the sum of five pounds and five shillings, of the monies of the said *M. D.* for his enlargement, and other wrongs,” &c.

^a *For the like, and obtaining a note for discharging.*

“And until he the said *M. D.* for his delivery from the said imprisonment, had signed and given to the said *A. B.* a note under the hand of the said *M. D.* whereby he the said *M. D.* promised to pay to the said *A. B.* the sum of three pounds; and other wrongs,” &c.

Indictment for an assault with an intent to ravish. [Vide Rape, post.]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of _____ in the county of _____ labourer, on the _____ day of _____ in the _____ year, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *A. W.* spinster, * in the peace of God and our said lord the king then and there being, did make an assault; and her the said *A. W.* then and there did beat, wound, and ill-treat, so that her life was greatly despaired of, with an intent her the said ^a *Ann, against her will*, then and there feloniously to ravish and carnally know; and other wrongs to the said *Ann* then and there did, to the great damage of the said *Ann*, and against the peace of our said lord the king, his crown and dignity. [*Another count for a common assault, as before, it being necessary if the intent is not plain.*]

[* 137]

^a These words (*against her will*) left out if under ten years of age, because then she cannot consent. (Unlawfully and feloniously, carnally to know and abuse) if under the age of ten.

Indictment against two persons for assaulting a married woman, with an intent that one of them should ravish her.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. H.* late of, &c. and *A. R.* late of _____ on the _____ day of _____ in the _____ year, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon *E.* the wife of one *H. S.* did make an assault, (she the said *E.* in the peace of God and our said lord the king then and there being), and her the said *E.* then and there did beat, wound, and ill-treat, so that her life was greatly despaired of, with intent that he the said *J. H.* should then and there feloniously, and against the will of the said *E.* ravish and carnally know her the said *E.* and other wrongs to the said *E.* then and there did, to the great damage of the said *E.* and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further * present, That the said *J. H.* and *A. R.* on the said _____ day of _____ in the year aforesaid, with force and arms, &c. [*Another count for a common assault.*]

[* 138]

Indictment for assaulting a woman with quick child, so that the child was brought forth dead.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. H.* late of the parish of *St. Sepulchre*, in the county of *Middlesex*, yeoman, on the fourth day of *April*,

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April, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon *M.* the wife of one *W. E.* in the peace of God and our said lord the king then and there being, and also then and there being big with a quick child, did make an assault; and her the said *M.* then and there did beat, wound, and ill-treat, so that her life was greatly despaired of, by reason whereof she the said *M.* afterwards, to wit, on the twenty-ninth day of the same month *April*, in the year aforesaid, at the parish of *St. Sepulchre* aforesaid, in the county aforesaid, did bring forth the said child dead; and other wrongs to the said *M.* then and there did, to the great damage of the said *W. E.* and *M.* his wife, and against the peace, &c. And the jurors, &c. [*Another count for a common assault.*]

[* 139] * *Indictment for assaulting one of the collectors of a turnpike in the execution of his office.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *G. S.* late of the parish of *L.* in the county of *M.* yeoman, on the eleventh day of *December*, in the year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *J. D.* (then and there being one of the collectors and receivers of the monies payable by virtue of a certain act of parliament made in the thirteenth year of the reign of his present majesty king *George* the third, intituled, ^a *An act to explain, amend, and reduce into one act of parliament the general laws now in being for regulating the turnpike-roads in that part of Great-Britain called England, and for other purposes*) and in the peace of God and our said lord the king, and in the execution of his said office, then and there also being, did make an assault; and him the said *J. D.* then and there did beat, wound, and ill-treat, so that his life was greatly despaired of; and other wrongs to the said *J. D.* then and there did, to the great damage of the said *J. D.* and against the peace of our said lord the now king, his crown and dignity. [*Here lay another count for a common assault.*]

^a Great care must be taken of the true recital of the title of the statute. By stat. 13 Geo. III. ch. 84, penalty not exceeding 10*l.* nor less than 40*s.* for assaulting or threatening collectors of tolls, or forcibly passing through turnpikes, &c. recoverable before one justice in a summary way. *Vide Act.*

[* 140] * *Indictment for an assault on a boy, with an intent to commit sodomy.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. George* the Martyr, in the county of *Middlesex*, yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the nineteenth day of *July*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *J. H.* an infant of the age of ten years, in the peace of God and our said lord the king then and there being, did make an assault; and him the said *J. H.* then and there did beat, wound, and ill-treat, so that his life was greatly despaired of, with an intent that most horrid, detestable, and

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and sodomitical crime (among Christians not to be named) called *suggery*, with the said *J. H.* against the order of nature, then and there feloniously, wickedly, and devilishly to commit and do, to the great displeasure of Almighty God, to the great damage of the said *J. H.* and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. [*Here add a count for a common assault.*]

Indictment for an assault with a drawn sword, with an intent to murder.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, labourer, on the first day of * *March*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, with a certain drawn sword which he the said *A. B.* in his right hand then and there had and held, in and upon one *S. W.* in the peace of God and our said lord the king then and there being, did make an assault, with an intent him the said *S.* then and there feloniously, wilfully, and of his malice afore-thought, to kill and murder; and other wrongs to the said *S.* then and there did, to the great damage of the said *S.* and against the peace of our said lord the king, his crown and dignity. [*Lay another count for a common assault.*]

[* 141]

Indictment for assaulting the driver of a chaise, and with the off-wheel of a cart overturning the chaise.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. P.* late of the parish of *St. James, Clerkenwell*, in the county of *Middlesex*, yeoman, on the seventh day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *R. C.* in the peace of God and our said lord the king, and in a certain chaise drawn by one horse, in the king's highway, then and there being, did make an assault; and that the said *J. P.* then and there driving one horse drawing a cart, did then and there, in the highway aforesaid, unlawfully, maliciously, and violently drive the said horse, so as aforesaid drawing the said cart, to and against the said chaise, and by such driving did then and there, in the highway aforesaid, unlawfully and * maliciously force the said cart against the said chaise; and he the said *J. P.* with the off-wheel of the said cart did then and there, in the highway aforesaid, unlawfully and maliciously overturn the said chaise in which the said *R. C.* then and there was as aforesaid, by means of which overturning of the chaise aforesaid he the said *R. C.* then and there was grievously hurt, bruised, and wounded; and other wrongs to the said *R. C.* then and there did, to the great damage of the said *R. C.* and against the peace, &c. [*Here add a count for a common assault.*]

[* 142]

Indictment for an assault and driving a cart against a chariot, and breaking the back of one of the horses drawing the chariot.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *E. P.* late of the parish of *St. Giles, Cripplegate*, in the county of *Middlesex*, yeoman, on the thirteenth day

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day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *E. L.* in the peace of God and our said lord the king, in a certain chariot drawn by two horses, in the king's highway, then and there being, did make an assault; and the said *E. P.* then and there driving two horses drawing a cart, did then and there, in the king's highway aforesaid, unlawfully, violently, and maliciously drive the said horses, so as aforesaid drawing the said cart, to and against the chariot and one of the said horses drawing the same, and by such violent driving did then and there, in the highway aforesaid, unlawfully and maliciously force the said cart against the said chariot and horse; and * he the said *E. P.* with the near-wheel of the said cart did then and there, in the highway aforesaid, unlawfully and maliciously break the back of the said last-mentioned horse, so drawing the said chariot as aforesaid, and by the violent force with which the said cart then and there came to and against the said chariot as aforesaid, he the said *E. P.* did then and there endeavour to overturn the said chariot in which the said *E. L.* then and there was as aforesaid, by means whereof the said *E. L.* then and there was grievously hurt, bruised, and wounded; and other wrongs to the said *E. L.* then and there did, to the great damage of the said *E. L.* and against the peace of our said lord the king, his crown and dignity. [*Here add a count for a common assault.*]

Indictment for an assault and beating out an eye.

[* 144]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. B.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, widow, being a person of a wicked and malicious disposition, on the second day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *M.* the wife of one *J. W.* violently did make an assault, (she the said *M.* in the peace of God and our said lord the king then and there being), and her the said *M.* then and there did beat, wound, and ill-treat, so that her life was greatly despaired of *; and that she the said *J. B.* with her right hand the said *M.* in and upon the left eye of her the said *M.* then and there unlawfully, violently, and maliciously did strike, by means whereof she the said *M.* * then and there the use, sight, and benefit of her said left eye entirely lost, and was deprived of; and also by means of the premises she the said *M.* became sick, weak, languid, and distempered for a long time, to wit, from thence until the day of the taking of this inquisition; and other wrongs to the said *M.* then and there violently and maliciously did, to the great damage and impoverishment of the said *J. W.* and *M.* his wife, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. [*Add a count for a common assault.*]

* *For the like, and tearing the hair off prosecutor's head by the roots.*

“AND also that she the said *J. B.* did then and there unlawfully and injuriously seize and take hold of the said *M.* by the hair of her head, and did then and there, with great force, wrath, and violence, pull and drag the said *M.* by the same, by means whereof she the

he said *J. B.* did then and there unlawfully, cruelly, and injuriously pull and tear the hair of the head of her the said *M.* off by the roots, and the head of her the said *M.* was thereby grievously wounded and hurt, and also by means of the premises the said *M.* was put to great pain and torture; and other wrongs to the said *M.* then and there violently and maliciously did, to the great damage of the said *J. W.* and *M.* his wife," &c.

* *Indiement for an assault, and encouraging a dog to bite.*

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. B.* late of the parish of *St. Giles* in the *Fields*, in the county of *Middlesex*, timber-merchant, on the sixteenth day of *October*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, did unlawfully incite, provoke, and encourage a certain dog of and belonging to the said *J. B.* to bite him the said *J. S.* by means whereof the same dog did then and there grievously bite the said *J. S.* and the said leg of him the said *J. S.* was thereby grievously hurt and wounded, to the great damage of the said *J. S.* and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, &c. [*Add a count for a common assault.*]

Indiement for an assault, and rescuing goods distrained for rent.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That on the twenty-fifth day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and continually afterwards, until the twenty-fifth day of *March*, in the year aforesaid, one *M. E.* did hold of one *J. W.* a certain room or apartment, with the appurtenances, being part and parcel of a certain messuage or dwelling-house of him the said *J. W.* situate in the parish of *St. John, Wapping*, in the said county * of *Middlesex*, by virtue of a certain demise thereof made by and from the said *J. W.* to the said *M. E.* at and under the rent of fifteen shillings, reserved and made payable by the said demise to the said *J. W.* on the said twenty-fifth day of *March*, in the year aforesaid; and that on the said twenty-fifth day of *March*, in the twenty-first year aforesaid, the said sum of fifteen shillings was due, in arrear, and unpaid for the rent aforesaid, by virtue of the said demise to him the said *J. W.* And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *M. E.* on the twenty-sixth day of *March*, in the twenty-first year aforesaid, did fraudulently and clandestinely convey and carry off and from the said demised premises his goods and chattels; that is to say, one pewter dish, &c. [*here mention the goods*] of the value of the said sum of fifteen shillings, with intent to prevent the said *J. W.* the lessor aforesaid, from distraining the same for the said rent so reserved, in arrear, due, and unpaid as aforesaid, whereupon the said *J. W.* afterwards, and within the space of five days next ensuing the said conveying and carrying off the same goods, to wit, on the twenty-eighth day of *March*, in the twenty first year aforesaid, at the parish of *St. Leonard, Shoreditch*, in the county aforesaid, did find the goods and chattels, and the same goods and chattels so found did then and there, in due form of law, seize as a distress for the rent so due and in arrear as aforesaid, and being also then unpaid,

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unpaid, and the said goods and chattels in his custody and possession for the cause aforesaid then and there had; and that the said *M. E.* late of the parish of *St. Leonard, Shoreditch*, aforesaid, in the county aforesaid, barber-surgeon, and *S.* his wife, afterwards, to wit, on the same day and year last aforesaid, at the parish last aforesaid, in and upon the said *J. W.* * in the peace of God and our said lord the king then and there being, did make an assault; and the said goods and chattels (so as aforesaid for the cause aforesaid taken and seized) out of the possession and against the will of the said *J. W.* unlawfully and injuriously did take, rescue, and carry away (the said sum of fifteen shillings so due for rent as aforesaid, or any part thereof, not being then paid or satisfied to the said *J. W.*); and other wrongs to the said *J. W.* then and there did, to the great damage of the said *J. W.* and against the peace of our said lord the king, his crown and dignity. [*Here add a count for a common assault.*]

By stat. 8 Ann. ch. 14, § 2, it is enacted, *That after the first day of May, 1710, in case any lessee for life or lives, term of years, at will, or otherwise, of any messuages, lands, or tenements, upon the demise whereof any rents shall be reserved or made payable, shall fraudulently and clandestinely convey and carry off from such demised premises his goods and chattels, with intent to prevent the landlord or lessor from distraining the same for arrears of such rent reserved as aforesaid, it shall and may be lawful for such lessor or landlord, or any person by him for that purpose lawfully impowered, within the space of ^a five days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of such rent, and the same to sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord in and upon such demised premises, for such arrears of rent, any law, custom, &c. to the contrary notwithstanding.*

^a By stat. 11 Geo. II. ch. 19, § 1, the time is enlarged to thirty days.

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* *Indictment for assaulting a game-keeper in the execution of his duty.*

Kent. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *Dartford*, in the county of *Kent*, gentleman, and *C. D.* late of the same, gentleman, on the fifth day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in the manor of _____ into a certain field and close of _____ and belonging to *W. S.* there lying and being, unlawfully and injuriously did enter, and in and upon one *E. F.* (then being game-keeper of the said manor ^a, duly deputed, authorized, and appointed by *G. H.* esquire, then and yet lord of the manor aforesaid) and in the peace of God and our said lord the king, and in the due execution of his duty as a game-keeper of the said manor, then and there also being, did make an assault; and him the said *E. F.* then and there did beat, wound, and ill-treat, so that his life was greatly despaired of; and other wrongs to the said *E. F.* then and there did, to the great damage of the said *E. F.* and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *A. B.* and *C. D.*

Common
assault.

on

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on the said fifth day of *May*, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *E. F.* in the peace of God and our said lord the king then and there being, did make an assault; and him the said *E. F.* did then and there beat, wound, and ill-treat, so that his life was greatly despaired of; and other wrongs to the said *E. F.* then and there did, to the great * damage of the said *E. F.* and against the peace of our said lord the king, his crown and dignity.

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a To prove this count, it is requisite to produce deputation and clerk of the peace's certificate of the entry thereof.

Stat. relating to game-keepers, 22 & 23 Car. II. ch. 25. 5 Ann. Sess. 2, ch. 14. Deputations to be entered with the clerk of the peace, who is to give a certificate thereof for one shilling, 9 Ann. ch. 25. Who to be appointed game-keepers, vide stat. 3 Geo. I. ch. 11. Vide also 25 Geo. III. ch. 50, and title Guns, post.

Indictment for feloniously assaulting a privy counsellor in the execution of his office.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. L.* late of the parish of *St. James*, within the liberty of *Westminster*, in the county of *Middlesex*, esq. not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, on the sixth day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the right honourable Sir *E. H.* knight, one of the privy counsellors of our said lord the king, and in the due execution of his said office in council then and there being, ^b feloniously did make an assault, and him the said Sir *E. H.* did then and there feloniously strike and wound, against the form of the statute in such case made and provided, in contempt of our said * lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

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By stat. 9 *Ann.* ch. 16, it is enacted, *That if any person shall attempt to kill, or unlawfully assault, strike, or wound any of her majesty's privy council, in the execution of his office in council, or in any committee of council, being convicted thereof in due form of law, he is thereby declared to be a felon, and shall suffer death, as in cases of felony, without benefit of clergy.*

The occasion of this act, Robert Harley, esq. (afterwards earl of Oxford) was stabbed by Anthony Guiscard, who was then under examination before a committee of the privy council.

^b The words "in the peace of God and our said lord the king" omitted: but it seems they are not absolutely necessary, though it is usual to insert them: *Vide Doctrine of Indictments, ante, § 61.*

Indictment for feloniously and maliciously assaulting a person on the highway, and spoiling, cutting, and defacing her garments and cloaths.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *I. J.* late of the parish of *St. Leonard*, *Shoreditch*, in the county of *Middlesex*, weaver, *R. D.* late of

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of the same, labourer, and *R. R.* late of the same, weaver, being persons of wicked and malicious minds, after the twenty-fourth day of *June*, in the year of our Lord one thousand seven hundred and twenty, to wit, on the sixteenth day of *September*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish of *St. Andrew, Holborn*, in the county aforesaid, in a public street and highway there, called *Holborn*, in and upon one *E. M.* spinster, in the peace of God and our said lord the king, in the said public street and highway, then and there being, * wilfully, maliciously, and feloniously did make an assault, with an intent to tear, spoil, cut, and deface the garments and cloaths of her the said *E. M.* and, with force and arms, did, in the said public street and highway, then and there, wilfully, maliciously, and feloniously tear, spoil, cut, and deface one printed linen gown, of the value of thirty shillings, of the goods and chattels of the said *E. M.* being part of the garments and cloaths of her the said *E. M.* on her person then and there in wear, against the form of the statute in that case made and provided, to the great damage of her the said *E. M.* in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

By stat. 6 *Geo. I.* ch. 23, § 11, it is enacted, *That if any person or persons shall, at any time or times, from and after the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and twenty, wilfully and maliciously assault any person or persons, in the public streets or highways, with an intent to tear, spoil, cut, burn, or deface the garments and cloaths of such person or persons, that then all and every such person or persons so offending, being thereof lawfully convicted, shall be and be adjudged guilty of felony, and every such felon shall be subject and liable to like pains and penalties as in cases of felony; and the courts by and before whom he, she, or they shall be tried, shall have full power and authority of transporting such felons for the space of seven years.*

Indictment for a felonious assault with intent to rob.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. G.* late of the parish of *St. Botolph without Aldgate*, in * the county of *Middlesex*, labourer, being a wicked and ill-disposed person, after the first day of *May*, in the year of our Lord one thousand seven hundred and thirty-four, to wit, on the sixteenth day of *October*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, with force and arms, to wit, with a certain *pistol* ^a which he the said *J. G.* in his right hand then and there had and held in and upon one *T. T.* in the peace of God and our said lord the king then and there being, unlawfully, maliciously, and feloniously did make an assault, with a felonious intent, the monies of the said *T. T.* from the person and against the will of him the said *T. T.* then and there feloniously to *steal, take, and carry away* ^b, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

^a See the note.

^b See the note, &c.

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*Heretofore this offence was but a misdemeanor, but the punishment not being adequate to the heinousness of the crime, nor sufficient to deter wicked persons from such attempts, it is enacted, by statute 7 Geo. II. ch. 21, that "if any person or persons, from and after the first day of May, in the year of our Lord one thousand seven hundred and thirty-four, shall with any offensive weapon or instrument ^a, unlawfully and maliciously assault, or shall by (b) menaces, or in or by any forcible or violent manner, demand any money, goods, or * chattels, of or from any other person or persons, with a felonious intent to rob or commit robbery upon such person or persons, that then and in every such case all and every such person and persons so offending, being thereof lawfully convicted, shall be and be adjudged guilty of felony," and shall be subject and liable to be transported as in cases of felony; and the courts before whom they are tried and convicted shall have full power and authority of transporting such offenders for the space of seven years, upon the like terms and conditions, and by the same ways and means, and in like manner, as other felons may or are to be transported to any of his majesty's colonies and plantations in America by force or virtue of any law for that purpose now in being.*

(b) If with menaces, express them in the indictment.

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Such convicts breaking gaol, or unlawfully returning from transportation, shall suffer death as felons without benefit of clergy.

N. B. This is a perpetual law, and no time limited to prosecute.

^a At the Old Bailey in April session, 1783, William Jackson and Thomas Randal were indicted on this statute, for that they, on, &c. "in the king's highway, with force and arms, in and upon one E. G. in the peace, &c. [usual words] unlawfully and maliciously did make an assault, and him the said E. G. unlawfully and maliciously did menace, then and there threatening to blow his brains out, with intent his monies feloniously from his person to take, steal, and carry away, against the form of the statute, &c." and found guilty; whereupon it was submitted to the consideration of the judges, whether the indictment should not have stated either that the assault was made with an *offensive weapon*, with a felonious intent to rob, &c. or that by *menaces*, or in or by a forcible or violent manner, a demand of monies or goods was made, with a felonious intent, &c. the words of the act being throughout in the disjunctive; who were of opinion that the indictment was insufficient, in not having stated that the assault was made with an *offensive weapon*, or that a demand was made of money or goods, &c. See the report, *L. Cr. Ca.* 251. Note.

Indictment for assaulting a person, provoking him to fight, and sending him a challenge.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *R. B.* late of the parish of *St. Paul, Shadwell*, in the county of *Middlesex*, gentleman, being a disturber of * the peace of our said lord the king, on the twentieth day of *April*, in the twentieth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *W. C.* in the peace of God and our said lord the king then and there being, did make an assault; and with threats and opprobrious language then and there wickedly and maliciously did stir up, provoke, and excite him the said *W. C.* to fight a battle against him the said *R. B.* and further, that the said *R. B.* afterwards, to wit, on the same day and year above mentioned, at the parish aforesaid, in the county aforesaid, came with force and arms, and with threats and opprobrious language then and there wickedly and maliciously did stir up, provoke, and excite him the said *W. C.* then and there being in the peace

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peace of God and our said lord the king, to fight against him the said *R. B.* a duel with swords and pistols; and other wrongs to the said *W. C.* then and there did, to the great damage and terror of him the said *W. C.* in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Indictment for sending a challenge in a letter.

City, borough,
and town of
Westminster,
in the county of
Middlesex.

[* 155] THE jurors for our lord the king upon their oath present, That *J. N.* late of the parish of *St. Paul, Covent-Garden*, within the Liberty of the dean and chapter of the collegiate church of *St. Peter, Westminster*, in the city, borough, and town of *Westminster*, in the county of *Middlesex*, yeoman, being a person of a wicked and * malicious disposition, and a common duelist, fighter, and disturber of the peace of our said lord the king, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the sixteenth day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, wickedly and maliciously intending and designing, as much as in him lay, not only to disquiet and terrify one *T. E.* but also the said *T. E.* maliciously, violently, and wickedly to kill and murder; and he the said *J. N.* his said malicious and wicked intentions and designs the sooner to compleat, perfect, and put in practice, afterwards, to wit, on the said sixteenth day of *May*, in the year aforesaid, with force and arms, at the parish aforesaid, within the liberty aforesaid, in the county aforesaid, did unlawfully and wickedly provoke and excite the said *T. E.* to fight and duel against him the said *J. N.* with a sword; and that he the said *J. N.* a certain challenge in the name of the said *J. N.* in the form of a letter, to the said *T. E.* directed, did then and there maliciously, wickedly, and diabolically write, and cause to be written, which said challenge, so as aforesaid written and directed, he the said *J. N.* afterwards, to wit, on the said sixteenth day of *May*, in the year aforesaid, at the parish aforesaid, within the liberty aforesaid, in the county aforesaid, maliciously and wickedly to the said *T. E.* did send and deliver, and cause to be sent and delivered, to the great damage and terror of him the said *T. E.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.^a

[* 156] * It is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the messenger of such a challenge, or even barely to endeavour to provoke another to send a challenge, or to fight; as, by dispersing letters to that purpose, full of reflections, and insinuating a desire to fight, &c. 1 Haw. 135.

An affray may receive an aggravation from the dangerous tendency thereof, as where persons coolly and deliberately engage in a duel, which cannot but be attended with the apparent danger of murder, and is not only an open defiance of the laws, but carries with it a direct contempt of the justice of the nation, as putting men under a necessity of righting themselves; upon which considerations, persons convicted of barely sending a challenge have been adjudged to pay a fine of one hundred

^a For other forms, Vide *Cr. Cir. Ass.* 34, 37, 39.

B A I L.

pounds, and to be imprisoned for one month, without bail, and also to make a public acknowledgment of their offence, and to be bound by their good behaviour. Ibid. 138. Vide 3 Inst. 158. 4 Black. Comm. 149.

B A I L.

Indictment for feloniously personating another person, and becoming bail in his name before a commissioner appointed to take bail in the country in matters arising in C. B.

Norfolk. **T**HE jurors for our lord the king upon their oath present, That on the sixteenth day of *September*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. our said lord the king, by his writ of *capias* issued out of the court of our said lord the king of *Common Capias issued.* *Bench* at *Westminster*, bearing date the same day and year, directed to the sheriff of *Norfolk*, did command * the said sheriff, that he [* 157] should take *J. R.* late of yeoman, and *J. D.* if they should be found in his bailiwick, and safely keep them, so that he might have their bodies before the justices of our lord the king, at *Westminster*, in three weeks from the day of *St. Michael*, to answer to *D. D.* of a plea that he render to him fifty pounds which he owed to and unjustly detained from him: which said writ afterwards, and before the return of the same, to wit, on the eighteenth day of *September*, in the year aforesaid, at [the place where delivered to the sheriff] was delivered to *A. S.* esq. sheriff of the county aforesaid, Its delivery to the sheriff; in form of law to be executed, which said *A. S.* sheriff of the county aforesaid, by virtue of the writ aforesaid, afterwards, and before the return of the said writ, to wit, on the said eighteenth day of *September*, in the year aforesaid, did make a certain warrant of his warrant. him the said sheriff, under his seal, directed to *S. C.* and *R. R.* his bailiffs of the hundred of in the county aforesaid, by which he commanded them jointly and severally, that they should take the said *J. R.* in the writ above-named, to answer the said *D. D.* of a plea that he render to him fifty pounds, which he owed to and unjustly detained as aforesaid; and that the said *S. C.* in the warrant aforesaid named, afterwards, and before the return of the said writ, to wit, on the twenty-fifth day of *September*, in the year aforesaid, by virtue of the writ and warrant aforesaid, at [the place] in the county aforesaid, did take and arrest the said *J. R.* in the said writ Arrest. and warrant above-named, according to the command of the writ and warrant aforesaid, and him the said *J. R.* then and there had in his custody, by virtue of the said writ and warrant aforesaid; and that *J. M.* late of in the county aforesaid, yeoman, That *J. M.* being a malicious and * ill-designing person, and wickedly contriving [* 158] and intending to prejudice and bring one *C. G.* to great expences, and unlawfully to subject him the said *C. G.* to the payment of a great sum of money, afterwards, to wit, on the said twenty-fifth day of *September*, in the year aforesaid, at in the county aforesaid, in his own proper person came before *J. F.* gentleman, came before the commissioner, and then and there, with force and arms, feloniously did represent and personate the person of the said *C. G.* of in the county and personated, &c. aforesaid, yeoman, and in the name and by the addition of him the said *C. G.* did become bail for the said *J. R.* in a certain recognizance taken before the said *J. F.* in the action aforesaid (he the said *J. F.* *G.*

PRECEDENTS of INDICTMENTS.

and did acknowledge to
owe, &c.

[* 159]

J. F. then and there having full and lawful power and authority, by virtue of a commission under the seal of the said court of *Common Bench*, to take a recognizance in that behalf in the said county of *Norfolk*, according to the form of the statute in such case made and provided), by which said recognizance he the said *J. M.* (by feloniously representing and personating the person of the said *C. G.*) in the name and by the addition of the said *C. G.* as aforesaid, before the said *J. F.* then and there unlawfully and feloniously did acknowledge to owe to the said *D. D.* the sum of fifty pounds, to be levied upon the goods and chattels, lands and tenements, of him the said *C. G.* upon condition that if the said *J. R.* should be condemned in the said action, he the said *J. R.* should pay the condemnation-money, or render himself into the *Fleet* for the same; or if he failed so to do, he the said *C. G.* (meaning the said *C. G.* of in the county of *Norfolk* aforesaid, yeoman, so represented and personated by the said *J. M.* as aforesaid) did undertake to do it for him (meaning the said *J. R.*) whereby the said *C. G.* so represented * and personated as aforesaid, was liable to the payment of the said sum of fifty pounds, to be recovered in the same action, as if he had really himself acknowledged and entered into the said recognizance, against the form of the statute in such case made and provided, to the evil example of all others in the like case offending, to the great damage of the said *C. G.* and against the peace of our said lord the king, his crown and dignity.

By stat. 4 *Will. & M.* ch. 4. (entitled, An act for taking special bails in the country, upon actions and suits depending in the courts of *King's Bench*, *Common Pleas*, and *Exchequer at Westminster*) it is enacted, That if any person or persons shall (before any person or persons impowered by virtue of this act to take bail or bails) represent or personate any other person or persons, whereby the person or persons so represented and personated may be liable to the payment of any sum or sums of money for debt or damages to be recovered in the same suit or action, wherein such person or persons are represented and personated, as if he or they had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed, and taken to be felons, and suffer as such. N. B. Benefit of clergy is not taken away.

By stat. 2. *Jac. I.* ch. 6, All persons who shall acknowledge, or procure to be acknowledged, any fine or fines, recovery or recoveries, deed or deeds inrolled, statutes or recognizances, bail or judgment, in the name of any person or persons not privy or consenting to the same, and being thereof lawfully convicted or attainted, shall incur the penalties of felons without the benefit of clergy.

No corruption of blood or loss of dower.

[* 160]

A bail before a judge was not bail within this statute, till it was filed of record, and if it was not filed, the acknowledging thereof in another's name * was not felony, but a misdemeanor only; but now it is felony by stat. 4 *Will. & M.* ch. 4.

BANKRUPT.

Indictment against a person who became a bankrupt in the late king's reign for concealing his effects. [See *Frith's case* at the end of the next precedent.]

That *J. B.*

Somerfet. **T**HE jurors for our lord the king upon their oath present, That *J. B.* late of the parish of *L. and W.* in the county of *S.* wheelwright, on the twentieth day of *January*, in

BANKRUPT.

in the thirty-third year of the reign of *George* the second, late king of *Great-Britain*, &c. and for the space of one whole year and more then last past, at the parish aforesaid, in the county aforesaid, did use and exercise the trade of merchandize by way of bargain-
 ing, exchange, bartering, and chevifance, and during the whole time aforesaid did there seek his trade of living by buying and selling; and the said *J. B.* so as aforesaid using and exercising the trade of merchandize, by way of bargaining, exchange, bartering, and chevifance, and seeking his trade of living by buying and selling, on the said twentieth day of *January*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, became indebted to *R. S.* of the city of *B.* in the county aforesaid, victualler, in the sum of one hundred pounds and upwards, of lawful money of *Great-Britain*, for a just and true debt; and being so indebted, and so as aforesaid using and exercising the trade of merchandize, he the said *J. B.* afterwards, to wit, on the same day, and in the year above-mentioned, at the parish aforesaid, in the county aforesaid, became a bankrupt within the true intent and meaning of the several statutes made * and then in force concerning bankrupts, some or one of them; that is to say, by withdrawing himself, &c. and that the said *J. B.* being and continuing such bankrupt, afterwards, to wit, on the nineteenth day of *May*, in the said thirty-third year of the reign of the said late king *George* the second, upon the petition of the said *R. S.* who was then a creditor of the said *J. B.* bankrupt as aforesaid, as well for himself as for all the other creditors of the said *J. B.* made and exhibited in writing unto the right honourable *Robert* lord *Henley*, baron of *Grainge*, in the county of *Southampton*, then lord keeper of the great seal of *Great-Britain*, bearing date the same day and year last aforesaid, a certain commission of the said late king, upon the statutes made and provided, and then in force, concerning bankrupts, was duly awarded and issued (a) out of the high court of *Chancery* of the said late king (the same court then being at *Westminster*, in the county of *Middlesex*) under the great seal of *Great-Britain*, against the said *J. B.* the bankrupt aforesaid, by the name and addition of *J. B.* of, &c. [as the addition may be], bearing date at *Westminster* the same day and year last mentioned, directed to *T V. R L.* esquires, and *T H. R B F.* and *J. B.* gentlemen [as the commission may be]; by which said commission the said late lord the king did name, assign, appoint, constitute, and ordain them the said *T V. R L. T H. R B F.* and *J B* his majesty's special commissioners, thereby ^a giving full power unto them, four or three of them, to proceed according to the same statutes in the same commission mentioned, and all other statutes in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold, and customary goods, debts, * and other things whatsoever, but also concerning all other persons who by concealment, claim, or otherwise, did or should offend touching the premises in the said commission specified, or any part thereof, contrary to the true intent and meaning of the said statutes, and to do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of his said creditors, as towards and for all other intents and purposes, according to the ordinance and provision of the same statutes, as by the said commission

did use and exercise, &c.

Became indebted, &c.

Became a bankrupt, &c.

[* 161]

Commission

awarded, &c.

(a) Bad without

this. Vide

Friib's case.

Naming commissioners.

[* 162]

As by, &c.

^a The commission, and all other proceedings relating to the bankruptcy, should be accurately set out and examined.

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Declared a bankrupt.

Notice as well to the bankrupt, as in the Gazette.

[* 163]

Time of surrender.

Examination.

[* 164]

Did not disclose, &c.

(among other things therein contained) doth more fully appear; and afterwards, to wit, on the twenty-third day of *May*, in the thirty-third year aforesaid, at the city of *B.* aforesaid, in the county aforesaid, the said *J. B.* was by the said *T V. T H.* and *R B F.* three of the aforesaid commissioners in the same commission named ^a (they having first severally duly taken the oath of a commissioner of bankrupt in that behalf, before they or either of them otherwise acted in the execution of any of the powers or authorities mentioned or expressed in the said commission, according to the form of the statute in such case made and provided) in due form of law declared and adjudged a bankrupt within the true intent and meaning of the several statutes made and then in force concerning bankrupts, some or one of them. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. B.* being so as aforesaid a bankrupt, and being so declared and adjudged a bankrupt, and being then so indebted to the said *R. S.* as aforesaid, and also to *C. R.* and divers others, whose names are yet unknown to the said jurors, in divers large sums of money, notice in writing was on the twenty-fourth day of *May*, in the year aforesaid, ^{*} delivered to the said *J. B.* at the then usual place of abode of the said *J. B.* ^b and notice was likewise given in the *London Gazette* of *Saturday* the twenty-ninth day of *May*, in the year aforesaid, that such commission as aforesaid was issued against the said *J. B.* and that he the said *J. B.* was declared a bankrupt; and that he was required to surrender himself to the commissioners in the said commission named, or the major part of them, on the and of *June*, then next, and on the tenth day of *July*, then also next following, at ten of the clock in the forenoon on each of the said days, at the sign of, &c. [as it may be], in the city of *B.* (being the times and place of meeting of the said commissioners in the said commission named, or the major part of them), and make a full discovery and disclosure of his estate and effects, and that at such last sitting he was to finish his examination, pursuant to the directions of the statute in that case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present, That on the said several days, and at the place last aforesaid, the said *T V. T H.* and *R B F.* being the major part of the commissioners in the said commission named and authorized, did meet accordingly; and the said *J. B.* being then and there examined upon oath touching his estate and effects, and fraudulently and wickedly devising ^{*} to cheat and defraud the said *R. S.* and others his just creditors, he the said *J. B.* did not then and there fully and truly disclose and discover unto the said last mentioned commissioners, then and there met as aforesaid, all his effects and estate, real and personal, and how and in what manner, and to whom and upon what consideration, and at what time or times, he had disposed of, assigned, or transferred divers of

^a Vide next precedent.

^b It is the safer way to state the place as in the next precedent, if the bankrupt be out of prison.

One *Watkinson*, a bankrupt, was tried for a similar offence at *Chester* Spring assizes, 1778, before the late Mr. Justice *Morton* and the present Mr. Justice *Buller*, and acquitted through a defect in the service of notice.

A proclamation of an order by the king in council, at a town in the parish where the offender resided, has been held insufficient, because there was a market-town nearer to the place where the offence was committed; and the court said, that every law introducing a capital punishment ought to be construed strictly. *Rex v. Harvey*, 1 *Wils.* 164.

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his goods, wares, merchandizes, and effects, of the value of twenty pounds and upwards, part of his personal estate; to wit, twelve deal wainscot doors, of the value of three pounds and twelve shillings; four waggon wheels made of wood, of the value of three pounds; ten pair of sashes made of deal wood, unglazed, of the value of three pounds and twelve shillings; thirty new deals, of the value of four pounds and ten shillings; eighteen inch oak boards, of the value of one pound and sixteen shillings; six pair of steel chaise-springs, of the value of six pounds; one saddle and one other saddle, called a chaise-saddle, of the value of twenty shillings together; one fowling-piece, of the value of fifteen shillings; and one bullock's hide, of the value of fifteen shillings, which, at the said time when he the said *J. B.* so as aforesaid became a bankrupt, and also at and before the issuing of the said commission, and since, to wit, on the said tenth day of *July*, in the thirty-fourth year of the reign of our said lord the late king, he the said *J. B.* was possessed of, interested in, and entitled unto (the said goods, wares, merchandizes, and effects not being before that time really and *bona fide* sold by the said *J. B.* in the way of his trade or dealings); but he the said *J. B.* then and there, to wit, on the said tenth day of *July*, in the thirty-fourth year aforesaid, at the parish aforesaid, in the county aforesaid, with force and arms, fraudulently and feloniously did remove, conceal, * and embezzle the goods, wares, merchandizes, and effects aforesaid, and did not deliver up the same, or any part thereof, to the said commissioners by the said commission authorized, or to the said *T. V. T. B.* and *R. B. F.* being the major part of them, with an intent then and there to defraud *R. S.* and others his just creditors, of the same, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, in manifest subversion of right and justice, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. [See the statute, &c. at the end of the next precedent.]

Goods concealed.

[* 165]
Embezzlement,

with intent, &c.

Indictment against a bankrupt for not surrendering himself to the commissioners to be examined touching his effects. [See *Frith's case*, at the end.]

London. **T**HE jurors for our lord the king upon their oath present, That *W. G.* late of the parish of *St. Paul, Shadwell*, in the county of *Middlesex*, mariner and merchant, on the * sixth day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and for the space of one whole year then last past, at the parish aforesaid, in the said county of *Middlesex*, did use and exercise the trade of merchandize, by way of bargaining, exchange, bartering, and

That *W. G.*

[* 166]

did use, &c.

* It seems that this conclusion is defective, for want of shewing the offence to have been committed against the peace of the late king

If an indictment against *A.* for an offence supposed to have been committed in the time of a former king, concludes against the peace of our lord the now king, it is insufficient; for it must be supposed to be done against the peace of that king in whose time it was committed. 2 *H. H.* 188, 189.

But if it be laid against the peace of both kings, it seems good: and that which relates to the latter will be rejected as surplusage. *Ibid.* 189.

And if a man be indicted in the time of one king against his peace, he may be arraigned for that offence in the time of his successor. *Ibid.* Vide Doctrine of Indictments, ante, § 69.

chevifance;

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who became indebted, &c.

[* 167]
Commission
awarded, &c.

(a) See *Fritb's*
case.

[* 168]

chevifance; and during the whole time aforefaid did there feek his trade of living by buying and felling; and the faid *W. G.* fo as aforefaid ufing and exercifing the trade of merchandize, by way of bargaining, exchange, bartering, and chevifance, and feeking his trade of living by buying and felling, on the faid fixth day of *November*, in the faid twenty-first year of the reign of our faid lord the king, at the parifh aforefaid, in the faid county of *Middlefex*, became indebted to *S. T.* of *London*, merchant, in the fum of one hundred and forty pounds, of lawful money of *Great-Britain*, for a juft and true debt; and being fo indebted, and fo as aforefaid ufing and exercifing the trade of merchandize, he the faid *W. G.* afterwards, to wit, on the fixth day of *November*, in the faid twenty-first year of the reign of our faid lord the king, at the parifh aforefaid, in the county aforefaid, became a bankrupt within the true intent and meaning of the feveral ftatutes made and then in force concerning bankrupts, fome or one of them; and that the faid *W. G.* being and continuing a bankrupt, afterwards, to wit, on the fixteenth day of *May*, in the twenty-first year aforefaid, upon the petition of the faid *S. T.* who was then a creditor of the faid *W. G.* bankrupt as aforefaid, as well for himfelf as for all other the creditors of the faid *W. G.* made and exhibited in writing unto the right honourable *H. E. B.* [*the name of the chancellor for the time being*] then lord high chancellor of *Great-Britain*, * bearing date the fame day and year laft aforefaid, a certain commiffion of our faid lord the king, upon the ftatutes made and provided, and then in force, concerning bankrupts, was duly awarded and *iffued* (a) out of the high court of *Chancery* of our faid lord the king (the fame court then and ftill being at *Weftminfter*, in the county of *Middlefex*) under the great feal of *Great-Britain*, againft the faid *W. G.* the bankrupt aforefaid, by the name and addition of, &c. [*as his addition may be*]; bearing date at *Weftminfter* the fame day and year laft aforefaid, directed to *T L. E S. R M. J W.* and *A H.* efquires [*as the commiffion may be*]; by which fame commiffion our faid lord the king did name, affign, appoint, conftitute, and ordain them the faid *T L. E S. R M. J W.* and *A H.* his fpecial commiffioners, thereby * giving full power and authority to the fame commiffioners, four or three of them, to proceed according to the ftatutes in the fame commiffion mentioned, and all other ftatutes then in force concerning bankrupts, not only concerning the faid bankrupt, his body, lands, tenements, freehold, and customary goods, debts, and other things whatfoever, but alfo concerning all other perfons who by concealment, claim, or otherwife, did or fhould offend touching the premifes in the faid commiffion fpecified, or any part thereof, contrary to the true intent and meaning of the faid ftatutes, and to do and execute all and every thing and things whatfoever, as well for and towards fatisfaction and payment of the creditors of the faid *W. G.* as for all other intents and purpofes, according to the ordinance and provifion of the fame ftatutes, as by the commiffion aforefaid (amongft other things therein contained) doth * more fully appear; and afterwards, to wit, on the twenty-third day of *May*, in the faid twenty-first year of the reign of our faid lord the king, at *London*, that is to fay, at the parifh of *St. Michael Baffifhaw*, in the ward of *Baffifhaw*, in *London* aforefaid, the faid *W. G.* was by the faid *T L. J W.* and *A H.* three of the

* To be examined as before directed.

aforefaid

BANKRUPT.

aforesaid commissioners in the said commission named, ^b in due form of law, declared and adjudged a bankrupt within the true intent and meaning of the several statutes made and then in force concerning bankrupts, some or one of them; whereupon afterwards, to wit, on the twenty-seventh day of *May*, in the twenty-first year aforesaid, notice in writing was left at the dwelling-house of the said *W. G.* situate in a certain place called _____ in the said parish of *St. Paul, Shadwell*, in the said county of *Middlesex*, the same house then being the usual place of abode of the said *W. G.* ^c that a commission of bankrupt had been issued against him the said *W. G.* late of the parish of *St. Paul, Shadwell*, in the county of *Middlesex*, mariner and merchant; and that the said *W. G.* was by the said notice commanded and required to surrender himself to the commissioners in the said commission named, or the major part of them, on the third and thirteenth days of *June* then next, and on the eighth day of *July* then next following, at *three of the clock in the afternoon on each of those days respectively, at the *Guildhall* of the city of *London*, (being the times and place of meeting of the said commissioners in the said commission named, or the major part of them), then and there to submit himself to be examined from time to time, and in all things to conform himself to the direction of the acts aforesaid: and afterwards, to wit, on the said twenty-seventh day of *May*, in the said twenty-first year of the reign of our said lord the king, notice was given and published in a certain printed paper called the *London Gazette*, that a certain commission of bankrupt had been issued against the said *W. G.* late of the parish of *St. Paul, Shadwell*, in the county of *Middlesex*, mariner and merchant, and that he had been declared a bankrupt; and he the said *W. G.* was by the same notice so as aforesaid published in the said *London Gazette*, required to surrender himself to the commissioners in the said commission named, or the major part of them, on the third and thirteenth days of *June* then next, and on the eighth day of *July* then also next following, at three of the clock in the afternoon on each of those days respectively, at the *Guildhall* of the city of *London*, (being the times and place of meeting of the said commissioners in the said commission named, or the major part of them), and make a full discovery and disclosure of his estate and effects. And the jurors aforesaid, upon their oath aforesaid, do further present, That afterwards, to wit, upon the thirtieth day of *June*, in the year of our Lord one thousand seven hundred and eighty-one, lord _____ baron of _____, then lord high chancellor of *Great-Britain*, by a certain order, bearing date the day and year last aforesaid, pursuant to the ^d statute in that * case made and provided, did enlarge the time for the said *W. G.*'s surrendering himself, and discovering and disclosing his estate and effects, for fifty days, to be computed from the end of the said eighth day of

Declared a bankrupt.

Notice thereof at the dwelling, &c.

See as before,

[* 169]

Notice in the Gazette,

requiring an appearance, &c.

See as before.

[* 170]
Enlargement of the time.

^b Upon inspecting some modern manuscript precedents, it appears that the allegation of the commissioners having been sworn, &c. ought to be inserted here as in the preceding form. *Vide* 5 *Geo. II.* ch. 30, § 43.

^c If the bankrupt be in prison, personal notice is required by the statute; and therefore it seems requisite to adhere to the words of it, by stating at this place as follows, (he the said *W. G.* not being then in prison.)

^d 5 *Geo. II.* ch. 30, § 3. By this section the order for enlarging the time must be six days at least before the last of the three days for surrendering, &c. *Vide* *Cooke's B. L.* 1st edit. Appendix, 101, as to the petition for the order, which may be either in the name of the bankrupt or of his assignees.

July

PRECEDENTS of INDICTMENTS.

Notice thereof
in the *Gazette*.
See as before.

(b) *Vide* direc-
tions for second
count, *post*, 173.

[* 171]
Purport of the
notice.

(c) *Vide* direc-
tions, *post*, 173.

[* 172]
Three of the
commissioners
met
and sat.

July aforesaid; and afterwards, to wit, on the twelfth day of *July*, in the said year of our Lord one thousand seven hundred and eighty-one, and in the twenty-first year of the reign of our said lord the king, ^c notice was given and published in a certain printed paper called the *London Gazette*, that the said lord high chancellor of *Great-Britain* had enlarged the time for the said *W. G.* late of the parish of *St. Paul, Shadwell*, in the county of *Middlesex*, mariner and merchant, against whom a commission of bankrupt had been issued, to surrender and finish his examination within the space of fifty days, to be computed from the end of the said eighth day of *July* then instant; and that the commissioners in the said commission named, or the major part of them, did intend to meet on the twenty-seventh day of *August* then next, at three of the clock in the afternoon of that day, at the *Guildhall* of the city of *London*, (being the time and place of meeting of the said commissioners in the said commission named, or the major part of them); (b) at which time the said bankrupt, by the last-mentioned *Gazette*, was required to finish his examination; and which said last-mentioned notice, at the time of publishing the same as * aforesaid, ^e purported (amongst other things) to be a notice to the said *W. G.* being such bankrupt as aforesaid, requiring him to appear before and surrender himself to the said commissioners in the said commission named, or the major part of them, on the said twenty-seventh day of *August*, in the said year of our Lord one thousand seven hundred and eighty-one, at three of the clock in the afternoon of the same day, at the *Guildhall* of the city of *London* aforesaid, and to sign or subscribe such surrender, and submit to be examined upon oath (he the said *W. G.* not then being one of the people called *Quakers*), by and before such commissioners, or the major part of them, by such commission authorized, touching and concerning the premises, and in all things to conform to the several statutes before then made, and then in force, concerning bankrupts; and upon such his examination fully and truly to disclose and discover all his effects and estate, both real and personal, and to finish such his examination, within the true intent and meaning of the statute in that case made and provided (c). And the jurors aforesaid, upon their oath aforesaid, do further present, That on the said third and thirteenth days of *June*, and the said twenty-seventh day of *August*, respectively above-mentioned (being the third and thirteenth days of *June*, and the twenty-seventh day of *August*, in the said year of our Lord one thousand seven hundred and eighty-one), at three of the clock in the afternoon on each of those days respectively, the said *T. L. E. S.* and *R. M.* being the major part of the said * commissioners by and in the said commission named and authorized, did meet at and in the *Guildhall* of the city of *London* aforesaid accordingly, for the purpose in that behalf aforesaid, and there sat for the purpose in that behalf aforesaid for a long time, to wit, for the space of then next following, on each of those days respectively (the same being reasona-
ble

^c From official information it appears, that private notice, as well as that in the *Gazette*, must be given, though the enlargement of time had been obtained at the instance of the bankrupt; therefore such notice should likewise be stated in the indictment.

^e This word is sufficiently positive, without stating that it was a notice. *Vide Birch and Martin's case, Le. Cr. Ca. 78.*

^f The precedent ran so; but (as before observed) care must be taken that the times correspond with the fact: as, for instance, if the default was only at

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ble and proper times for that purpose: yet the said *W. G.* late of the Breach. parish of *St. Paul, Shadwell*, in the county of *Middlesex* aforesaid, mariner and merchant, not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, did not, upon the said twenty-seventh day of *August*, in the said year of our Lord one thousand seven hundred and eighty-one, or upon any of the said other days and times before-mentioned for the purpose in that behalf aforesaid, or at any other day or time whatsoever, surrender himself to the said *T. L. E. S.* and *R. M.* being the major part of the said commissioners so as aforesaid in and by the said commission named and authorized, and submit to be examined as aforesaid, but did feloniously and wilfully make default, and omit and neglect to surrender himself to, and to be examined as aforesaid by and before the said *T. L. E. S.* and *R. M.* being the major part of such commissioners so met at and in the said *Guildhall* in the said city of *London* as aforesaid; (d) neither did he the said *W. G.* on any of the days and times before-mentioned for * the purpose in that behalf aforesaid, or at any other day or time whatsoever, appear at or in the *Guildhall* of the city of *London* aforesaid, or at any other place whatsoever, for the purpose of surrendering himself to, and being examined as aforesaid by and before the said commissioners in and by the said commission named and authorized as aforesaid, or the major part of them, but therein feloniously and wilfully made default, and wholly neglected and omitted to appear at the times and place in that behalf aforesaid, or at any other time or place whatsoever, for the purpose of surrendering himself as such bankrupt as aforesaid to, and being examined as aforesaid by and before the said commissioners so in and by the said commission named and authorized as aforesaid, or the major part of them; (e) that is to say, at the *Guildhall* of the city of *London* aforesaid, in the said parish of *St. Michael Bassishaw*, in the ward aforesaid, in *London* aforesaid, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, in manifest subversion of right and justice, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. [second count, omitting what is contained between the letters *b* and *c*, and inserting in its stead as follows—"at which time and place the said *W. G.* (being such bankrupt as aforesaid), by the said last-mentioned *Gazette*, was required to surrender himself, and finish his examination; that is to say, his examination in the premises by and before the said commissioners in the said commission named, or the major part of them, within the true intent and meaning of the said commission, and also pursuant to the directions, and within the true intent and * meaning of the statute in that case made and provided;" and also omitting what is contained between the letters *d* and *e*.]

(d) *Vide directions for second count, post.*

[* 173]

(e) *Vide directions.*

Directions for the second count.

[* 174]

A bankrupt not surrendering and submitting himself to be examined, or concealing or embezzling his effects to the amount of twenty pounds, or any books of account, &c. is guilty of felony without benefit of clergy, stat. 5 *Geo. II.* ch. 30, § 1; continued by 21 *Geo. III.* ch. 29, &c.; further continued by 28 *Geo. III.* ch. 24, to 1st *June*, 1793, &c.

at the last meeting, when the bankrupt should have finished his examination, let the real time be stated; for as to that sitting, he has got until the last minute to appear. *Co. Bank. Laws*, 2d edit. 474.

PRECEDENTS of INDICTMENTS.

Note.

If the notices under the commission happen to be defective, the indictment must be defective also, as will appear by the following case, which is here inserted as well for the information of those gentlemen who may be employed in drawing similar indictments as others whom the subject may concern.

Frith's case, Lc. Cr. Ca. 11.

The manner in which the indictment must charge the offence, explained in this case.

First notice.

Second notice.

[* 175]

Third notice.

Several objections.

First.

Second.

[* 176]

Third.

Fourth.

At the *Old-Bailey*, October session, 1738, *Edward Frith* was indicted before lord chief justice *Lee* and others on the above statute, for that he, being indebted to *George Hatfield* in the sum of one hundred pounds, became a bankrupt; and that a commission of bankruptcy being awarded against him, he was by the commissioners declared a bankrupt; and that notice in writing thereof was left at his dwelling-house, by which he was required to surrender himself to the commissioners at *Guildhall, London*, and submit to be examined, and to conform to the directions of the said act; that afterwards notice was published in the *London Gazette* for the said *Edward Frith* to surrender himself at *Guildhall*, and make a disclosure of his effects, &c.; that afterwards lord *Talbot*, then lord high chancellor of *Great-Britain*, did enlarge the time for the said *Edward Frith's* surrendering and discovering his effects for fifty days, to be computed, &c.; that notice was given in the *Gazette*, that the lord high chancellor had enlarged the time for the said *Edward Frith* to surrender, &c.; and that he the said *Edward Frith*, was therein required to surrender himself to be examined, &c.; but that he the said *Edward Frith*, lightly regarding the laws, &c. feloniously made default, and neglected to surrender himself to be examined, &c. against the form of the statute, &c. The prisoner's counsel raised four objections against the validity of this indictment:

First objection.—The statute enacts, That if any person against whom a commission of bankrupt had been awarded and issued out, &c. shall not, within forty-two days after notice thereof in writing, surrender, &c." The indictment therefore should have not only stated, that the commission was awarded, but that it had duly issued; for there is a material difference in the meaning of these words, the word *awarded* signifying the thing ordered to be done, and the word *issued* signifying the thing done.

Second objection.—The act says, "That after notice in the *London Gazette* that such commission hath issued, the bankrupt shall surrender himself to the commissioners named in the said commission, or the major part of them;" whereas, in one of these notices stated in the indictment, they have spun out their directions for the prisoner to surrender to all the five commissioners, * leaving out the words *or the major part of them*.

Third objection.—The act says, "That the bankrupt shall have notice that such commission has issued, and of the time and place of meeting of the commissioners therein named, &c." but in the other notice they say, that he must surrender to three of them, without naming any of the rest.

Fourth objection.—That there ought to have been an averment in the indictment, that the commissioners did sit, and that those commissioners should have been named; whereas they were not named in their notice, and they had only set forth, that he was required to surrender to the commissioners at *Guildhall*, which might as well be understood

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understood of the commissioners of *sewers*, or of the *lieutenancy*, as of the commissioners of bankrupts, for they all sit in the same *Guildhall*.

The court were of opinion, that all these objections were good, *Per curiam*. and the indictment consequently vicious: upon which the prosecutor moved that the indictment might be quashed; but the court said, it was by no means proper to encourage the quashing of indictments after a prisoner had pleaded. The motion was accordingly refused, and the prisoner being put upon his defence, an acquittal was entered. *Acquittal*.

As this is a penal law, reaching the life of the bankrupt, a court of equity will not lend its aid * to a prosecution by ordering the clerk of the commission to attend at the *Old-Bailey* with the proceedings under the commission; but the party must prove him both a bankrupt and a felon within the meaning of the act. *Case ex parte Wood v. Camerlan*, 1 *Atk.* 221. *Cooke's Bankrupt Laws*, 1st edit. 103, 104 2d edit. 477, 478, 479. And it is also said in the same case, in *Atkins*, 222, that where a bankrupt did not surrender himself in due time, if there did not appear to be any intention of defrauding his creditors, Lord *Macclesfield*, in several instances, superceded the commission, in order to prevent such a prosecution. But in some cases supercede the commission in order to prevent it.

Touching the commissioners' power to examine and commit, &c. see the cases of *Bracy*, *Salk.* 348; *Hollingshead*, *ibid.* 351; 2 *Lord Raym.* 851; *Rex v. Perrot*, 2 *Burr.* 1122; *Dyer v. Miffing*, &c. 2 *Black. Rep.* 1035; *Miller v. Seare* and others, *ibid.* 1141; and 2 *Strange*, 880; which shew that the acts must be strictly pursued. See also 1 *Bac. Abr.* 253, 254, 255. *Co. Bank. Laws*, 2d edit. 151 to 162. Commissioners' power to examine and commit, &c.

If the bankrupt absconds, or is likely to run away, between the time of the commission issued and the last day of surrender, he may, by warrant from any judge or justice of peace, be apprehended and committed to the county gaol. 1 *Haw.* 6th edit. 204, and the several authorities there cited. As to process if the bankrupt absconds before the last day of surrender, &c.

One *Cole* was indicted for that he, being a bankrupt, and brought before the commissioners, refused to give them an account of his effects, &c.; and the defence at the trial, upon not guilty pleaded, was, "his infancy at the time of contracting the debts," and therefore he could not be a bankrupt. And of this opinion was *Holt*, chief justice, who held, that though the debts of an infant are only voidable by him at his election, yet no man can be a bankrupt for debts which he is not * obliged to pay; and the defendant was thereupon acquitted. 1 *Lord Raym.* 443. Vide 198. Infants cannot be bankrupts, and therefore not punishable as felons for omitting to surrender, &c.

As to the law of bankrupts in general, see 1 *Bac. Abr.* 246 to 272; 1 *Com. Dig.* tit. *Bankrupt*; and *Cooke's Bankrupt Laws*. [* 178]

^a Touching the power of the court to discharge a jury after a prisoner has been put upon his trial, &c. see *Harg.* and *Butler's Co. Lit.* 227, (f). 4 *St. Tr.* 232. 1 *H. H.* 35. 2 *H. H.* 294, 295. *Fost.* 26, 27.

BARRATRY.

Indictment for being a common barrator.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. Martin* in the *Fields*, in the county of *Middlesex*, labourer, on the fiftenth day of *October*, in the twenty first year of the reign of our sovereign

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sovereign lord *George* the third, king of *Great-Britain*, &c. and on divers other days and times, as well before as afterwards, was and yet is a common barrator; and that he the said *A. B.* on the said fifteenth day of *October*, and on divers other days and times, at the parish aforesaid, in the county aforesaid, divers quarrels, strifes, suits, and controversies, among the honest and quiet liege subjects of our said lord the king, then and there did move, procure, stir up, and excite, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a

[* 179]

Barratry is the offence of frequently exciting and stirring up suits and quarrels between his majesty's subjects, either at law or otherwise. The punishment of this offence, in a common person, is by fine and imprisonment: but if the offender belongs to the profession of the law, it is said he * ought also to be disabled from practising for the future. 4 *Black. Com.* 133, 134. 1 *Haw.* 244. So a person suing another in the name of a fictitious plaintiff, either not in being at all, or who is ignorant of the suit, is a barrator. 4 *Black. Com.* 134.

This offence, if committed in any of the king's superior courts, is left, as a high contempt, to be punished at their discretion; but in courts of a lower degree, where the crime is equally pernicious, but the authority of the judges not equally extensive, it is directed by 8 *Eliz.* ch. 2, to be punished by six months imprisonment, and treble damages to the party injured. *Ibid.*

It is also said that a man shall not be adjudged a barrator in respect of any number of false actions brought by him in his own right; yet *Hawkins* said, that if such actions were merely groundless and vexatious, without any manner of colour, and brought only with a design to oppress the defendants, he could not see why a man might not as properly be called a barrator for bringing such actions himself, as for stirring up others to bring them. 1 *Haw.* 243.

Common takers or detainers (by force or subtilty) of possession of houses, lands, or goods, which have been in question or controversy, are barrators. *Dalt.* (edit. 1727) ch. 10.

Inventers and sowers of false reports, whereby discord ariseth or may arise between neighbours, are barrators. *H. & B. Co. Lit.* 368.

But all such persons must be common barrators, not in one or two, but many instances. 1 *Haw.* 243. Vide *stat.* 3 *Edw. I.* cb. 33. 34 *Edw. III.* cb. 1. ^b

^a Vide Doctrine of Indictments, ante, § 40, 78.

^b Vide also 1 *Bac. Abr.* 280, 281. *Dalt.* ch. 10. 1 *Bur. Just.* 15th edit. 176. As to *Champerty* and *Maintenance*, vide 4 *Black. Com.* 134.

[* 180]

* B A S T A R D Y.

Indictment for felony, in concealing the death of a bastard child.

Northampton. **T**HE jurors for our lord the king upon their oath present, That *M. L.* late of *Chapel-Brampton*, in the county of *Northampton*, spinster, on the seventh day of *February*, in the first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. being big with a male child, the same day and year, at *Chapel-Brampton* aforesaid, in the county aforesaid, by the providence of God, did bring forth the said child alive,

B A S T A R D Y.

alive, of the body of her the said *M.* alone, and in secret; which said male child, so being born alive, by the laws of this realm was a bastard; and that the said *M. L.* not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, afterwards, to wit, on the said seventh day of *February*, in the year aforesaid, as soon as the said male bastard child was born, with force and arms, at *Chapel-Brampton* aforesaid, in the county aforesaid, in and upon the said child, in the peace of God and our said lord the king then and there being, feloniously, wilfully, and of her malice aforethought did make an assault; and that she the said *M.* with both her hands about the neck of him the said child then and there fixed, him the said child then and there feloniously, wilfully, and of her malice aforethought did choak and strangle, of which said choking and strangling the said child then and there instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *M. L.* him the said male bastard child, in form * aforesaid, feloniously, wilfully, and of her malice aforethought did kill and murder, against the peace of our said lord the king, his crown and dignity.

[* 181]

By stat. 21 *Jac. I.* ch. 27, it is enacted, *That if any woman be delivered of any issue of her body, male or female, which, being born alive, should by the laws of this realm be a bastard, and that she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself or procuring others to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed, in every such case the mother shall suffer death, as in a case of murder, except such mother can make proof by one witness, at the least, that the child was born dead.*

The indictment to put the prisoner to this proof, by one witness, that the child was dead-born, must contain this special matter, That the prisoner was delivered of a child, which by the laws of the kingdom was a bastard, and that it was born alive, and shew how she killed it.

But the indictment need not alledge, that she concealed it; but it must be proved upon evidence, if the advantage be taken of the statute against her.

The indictment need not conclude, against the form of the statute; ^a for the statute only directs the evidence where the case is within it, but creates not a new one.—See Ann Davis's case, Kely. 32. 2 Haw. 438.

*If there is no concealment proved, yet it is left to the jury to inquire, whether she murdered it or not, by those circumstances that occur in this case, as if it be wounded or hurt, &c. but it does not put her upon an absolute * necessity of proving it born alive by one witness, and so the evidence stands but as at common law.*

[* 182]

If upon view of the child it be testified by one witness, by apparent probabilities, that the child was not come to its debitum partus tempus, as if it have no hair or nails, or other circumstances, this (says Lord Hale), I have always taken to be a proof by one witness, that the child was born dead, so as to leave it nevertheless to the jury, as upon a common law evidence, whether she were guilty of the death or not.^b

^a *Vide Doctrine of Indictments, ante, § 74.*

^b The whole of this *Doctrine* is contained in 2 *H. H.* 288, 289.

PRECEDENTS of INDICTMENTS.

B I G A M Y.

Indictment for marrying a second husband or wife, the former being living.

Middlesex. **T**HE jurors for our lord the now king upon their oath present, That *W. R.* late of the parish of *St. Sepulchre*, in the county of *Middlesex*, labourer, on the first day of *July*, in the thirty-first year of the reign of *George* the second, late king of *Great-Britain*, &c. at *London*, to wit, in the parish of *St. Bridget*, otherwise *Bride*, in the ward of *Farringdon-Without*, did marry one *F. U.* spinster, and her the said *F.* then and there had for his wife; and that the said *W. R.* afterwards, to wit, on the fourth day of *April*, in the year of the reign of our sovereign lord *George* the third, now king of *Great-Britain*, &c. with force and arms, at *London* aforesaid, to wit, in the said parish of *St. Bridget*, otherwise *Bride*, in the said ward of *Farringdon-Without*, feloniously did marry, and to wife * did take one *M. Y.* spinster, and to her the said *M.* then and there was married (the said *F.* his former wife, being then living, and in full life), against the form of the statute in such case made and provided, and against the peace of our said lord the now king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That afterwards, to wit, on the second day of *October*, in the year of the reign of our said lord the now king, the said *W. R.* at the parish of *St. Andrew, Holborn*, in the said county of *Middlesex*, was apprehended and taken for the felony aforesaid.

[* 183]

By stat. 1 Jac. II. ch. 11, *This offence is felony, and punishable with death, but no mention made of clergy, so that clergy has been for the most part or always allowed to offenders, and the parties may be proceeded against in the county where they shall be apprehended, as if the offence had been committed in that county, and is the reason why the caption of the party is added to the indictment, in order to make the offender culpable of felony in such county where he shall be so apprehended; which latter part of the indictment is to be omitted, if the offender be tried where the felony was actually committed.*

Nor to extend to persons whose husband or wife shall be continually remaining beyond the seas by the space of seven years together, or whose husband or wife shall absent him or herself for the like space in any part within his majesty's dominions, the one of them not knowing the other to be living within that time. Nor to extend to persons divorced, or to persons where the former marriage shall be declared to be void by sentence in the ecclesiastical court; nor to any person or persons for or by reason of any former marriage within age or consent. 1 H. H. 692.

This is a perpetual law, and no time limited to prosecute.

[* 184]

* *Those divorced a vinculo matrimonii, and those divorced a mensa & thoro causa adulterii aut sævitæ, are within the exception of the statute, notwithstanding there be not the words we divorce, but only the words we separate, in the sentence; because the statute being penal, shall be favourably construed, and such separations are taken for divorces in common understanding.* 1 Haw. 111. Vide 3 Inst. 88, 89.

If the first marriage was beyond sea, and the latter in England, the party is indictable here; for it is the second marriage that makes the offence; but if the first marriage was in England, the latter beyond sea, it is said the offender cannot be indicted here. 1 Sid. 171. 1 H. H. 692, 693.

But

B L A C K A C T.

But the words of this statute are, That the parties so offending shall receive such and the like proceeding, trial, and execution, in such county where such person or persons shall be apprehended, as if the offence had been committed in such county where such person or persons shall be taken or apprehended.

On a prosecution upon this statute, the first and true wife is not to be allowed as a witness against the husband; but it seems clear, that the second wife may be admitted to prove the second marriage, for she is not his wife so much as de facto. 1 H. H. 693.^a Vide 1 Bac. Abr. 321. 4 Black. Com. 163.

^a See the indictment against the *Dutchess of Kingston*, Cro. Cir. Ass. 19.

* B L A C K A C T.

[* 185]

Indictment for felony, in appearing armed, disguised, and stealing deer in an inclosed park.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *Enfield*, in the county of *Middlesex*, labourer, *C. D.* late of the same, labourer, and *E. F.* late of the same, labourer, being ill-designing and disorderly persons, not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after the first day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on the sixth day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. being armed with pistols and other offensive weapons, having their faces blacked and disguised, with force and arms, at the parish aforesaid, in the county aforesaid, in a certain park there lying and being, (inclosed with wooden pales, where deer had been usually and then were kept, belonging to Sir *J. S.* bart.) unlawfully and feloniously did enter and appear, and one fallow deer of the price of forty shillings, of the goods and chattels of the said Sir *J. S.* in the same park then and there being found, with force and arms, then and there unlawfully, wilfully, and feloniously did hunt, wound, kill, destroy, steal, take, and carry away, against the form of the statute in such case made and provided, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

* By stat. 9 Geo. I. ch. 22, § 1, *If any person or persons, from and after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, being armed with swords, fire-arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or ground inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or in any warren or place where hares or conies have been or shall be usually kept, or in any high road, open heath, common, or down, or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, or unlawfully rob any warren or place where conies or hares are usually kept, he or they shall suffer death as in cases of felony, without benefit of clergy.* Made perpetual by 31 Geo. II. ch. 44.

[* 186]

Indictment

PRECEDENTS of INDICTMENTS.

Indictment for felony, in breaking down the head and mound of a fish-pond, whereby the fish were lost.

[* 187] *Middlesex.* **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *Hornsey*, in the county of *Middlesex*, labourer, being an evil-disposed person, after the first day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on the eighth day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, the head and mound of a certain fish-pond, in a certain orchard belonging to *J. D.* esq. there situate and being, unlawfully, maliciously, and feloniously did break down, whereby the fish in the same pond then and there being * were lost and destroyed, to the great damage of the said *J. D.* against the form of the statute in such case made and provided, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

By stat. 9 Geo. I. ch. 22, § 22, *If any person or persons, from and after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed, he or they shall suffer death as in cases of felony, without benefit of clergy.* Made perpetual as before mentioned.

Indictment for felony, in maliciously cutting down two elm-trees, growing for ornament.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *T. S.* late of the parish of *Fulham*, in the county of *Middlesex*, labourer, after the first day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on the third day of *April*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, maliciously, and feloniously did cut down and destroy two elm-trees, in a certain avenue to the dwelling-house of one *W. S.* there planted and then growing for ornament (he the said *W. S.* then being the owner of the said trees), to the great damage of the said *W. S.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

[* 188] * By stat. 9 Geo. I. ch. 22, § 1, *If any person or persons, from and after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, shall maliciously cut down, or otherwise destroy, any trees planted in any avenue, or growing in any garden, orchard, or plantation for ornament, shelter, or profit, he or they shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.* Made perpetual as before mentioned.

Indictment for feloniously rescuing a person from a constable, charged with feloniously, &c. sending a letter without a name subscribed, demanding money.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That on the seventh day of *February*, in the twenty-first year of the reign of our sovereign lord *George* the third,

third, king of *Great-Britain*, &c. one *I. W.* at the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, was brought by *J. B.* then being one of the constables of the same parish, before *J. P.* esq. then and yet one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, and the said *I. W.* then and there was charged upon the oath of *S. F.* for feloniously, knowingly, and maliciously sending a certain letter to *J. F.* demanding money, and the said *I. W.* was then and there examined before the said *J. P.* the said justice, touching and concerning the aforesaid felony, and thereupon the aforesaid *J. P.* the said justice, then and there, in due form of law, did make a certain warrant under his hand and seal, bearing date the said seventh day of *February*, in the year of our Lord one * thousand seven hundred and eighty-one, directed to the keeper of *Newgate*, or his deputy, commanding them to receive into custody the body of the said *I. W.* charged upon the oath of the said *S. F.* with feloniously, knowingly, and maliciously sending a letter, without any name subscribed, to *J. F.* demanding money, and the said justice by his warrant aforesaid did command the said keeper to safely keep the said *I. W.* in custody until he the said *I. W.* from thence should be discharged by due course of law; which same warrant afterwards, to wit, on the said seventh day of *February*, in the said twenty-first year of the reign of our said lord the king, at the parish aforesaid, in the county aforesaid, was delivered to the said *J. B.* then and there being one of the constables of the said parish, and the said *J. B.* him the said *I. W.* in his custody, by virtue of the said warrant, and for the cause aforesaid, then and there had; and that the said *I. W.* late of the parish aforesaid, in the county aforesaid, labourer, *E. W.* late of the same, labourer, *T. W.* late of the same, labourer, being ill-designing and disorderly persons, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, but wickedly and unlawfully contriving and intending to pervert the due course of law, and to cause the said *I. W.* to escape with impunity, afterwards, to wit, on the said seventh day of *February*, in the said twenty-first year of the reign of our said lord the king, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *J. B.* (then and there being constable as aforesaid, and then and there lawfully having the said *I. W.* in his custody, by virtue of the said warrant, for the cause aforesaid) in the peace of God and our said lord the king, and in the due execution of his said office, then and there being, did make an * assault; and that the said *E. W.* and *T. W.* the said *I. W.* out of the custody of the said *J. B.* and against the will of him the said *J. B.* then and there, with force and arms, unlawfully, forcibly, and feloniously did rescue, and put at large to go where he would, to the great hindrance of justice, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

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By stat. 9 Geo. I. ch. 22, § 1, *If any person or persons, from and after the first day of June, one thousand seven hundred and twenty-three, shall forcibly rescue any person, being lawfully in custody of any officer, or other person, for any of the offences in the statute mentioned, he or they shall be adjudged guilty of felony, and shall suffer death as in cases*

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cases of felony, without benefit of clergy. Made perpetual as before mentioned.

See hereafter, title Escape and title Prison.

Indictment for feloniously and maliciously killing a gelding.

[* 191] *Essex.* **T**HE jurors for our lord the king upon their oath present, That *A. H.* late of *Chelmsford*, in the county of *Essex*, labourer, being an ill-designing and disorderly person, and of a wicked and malicious mind, after the first day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on the seventh day of *September*, in the twentieth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish of *Fryerning*, in the county aforesaid, one black * gelding, of the price of fourteen pounds, of the goods and chattels of one *J. J.* in a certain field belonging to him the said *J. J.* then and there being, feloniously, unlawfully, wilfully, and maliciously, then and there, did kill and destroy, to the great damage of him the said *J. J.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.^a

By stat. 9 *Geo. I.* ch. 22, § 1, *If any person, after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, shall unlawfully and maliciously kill, maim, or wound any cattle, he shall suffer death as in cases of felony, without benefit of clergy. Made perpetual as before mentioned.*

Note. By stat. 22 & 23 *Car. II.* ch. 7, *Whoever shall, in the night-time, maliciously, &c. burn any stacks of corn, hay, or grain, barns, or other houses or buildings, or kilns, or shall in the night-time maliciously, &c. kill or destroy horses, sheep, or other cattle, shall be guilty of felony; but liberty is given to the offender to chuse transportation for seven years.*

Indictment for maliciously shooting at a person in his dwelling-house.

[* 192] *Surry.* **T**HE jurors for our lord the king upon their oath present, That *A. N.* late of the parish of *Croydon*, in the county of *Surry*, labourer, being an ill-designing and disorderly person, of a wicked and malicious disposition, and not regarding the laws and statutes of this realm, nor the pains and penalties therein * contained, after the first day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on the eighteenth day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, with a certain gun, loaded with gunpowder and a leaden bullet, which he the said *A. N.* in both his hands then and there had and held, he the said *A. N.* with the said gun, so being loaded as aforesaid, did then and there wilfully, maliciously, unlawfully, knowingly, and feloniously shoot at *A. D.* esq. (the said *A. D.* then and there being in his own dwelling-house), against the form of the statute in such case made and provided, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

^a For maliciously maiming a gelding in a field, *vide* *Cro. Cir. Aff.* 26.

Indictment for maliciously shooting at two different persons, in different places, on the same day, with a gun loaded with gunpowder and leaden shot.

Herefordshire. **T**HE jurors for our lord the king upon their oath present, That *James Davies*, late of the parish of *Cloddock*, in the county of *Hereford*, labourer, being an ill-designing and disorderly person, of a wicked and malicious disposition, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after the first day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on the sixteenth day of *June*, in the twenty-eighth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, with a certain gun, * loaded with gunpowder and leaden shot, which he the said *J. D.* in both his hands then and there had and held, he the said *J. D.* did then and there unlawfully, wilfully (a), maliciously, and feloniously shoot at one *R. J.* the younger (he the said *R. J.* in the peace of God and our lord the king, and in a certain place called the *Beast-house*, then and there being), against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. D.* being such ill-designing and disorderly person as aforesaid, of a wicked and malicious disposition, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after the first day of *June*, in the year of our Lord, one thousand seven hundred and twenty-three, to wit, on the sixteenth day of *June*, in the twenty-eighth year of the reign of our said lord the king, with force and arms, at the parish aforesaid, in the county aforesaid, with a certain gun loaded with gunpowder and leaden shot, which he the said *J. D.* in both his hands then and there had and held, he the said *J. D.* did then and there unlawfully, wilfully, maliciously, and feloniously shoot at one *D. G.* he the said *D. G.* in the peace of God and our said lord the king, and in a certain place called an entry, near a dwelling-house, then and there being), against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity ^a

First count, stating the offence to be in a certain place called a *Beast-house*.

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(a) See the note at the end.

Second count, stating the offence to be in an entry, &c.

* By stat. 9 *Geo. 1.* ch. 22, § 1. *If any person, after the first of June, in the year of our Lord one thousand seven hundred and twenty-three, shall wilfully and maliciously shoot at any person, in any dwelling-house, or other place, he shall suffer death as in cases of felony, without benefit of clergy.* Made perpetual as before mentioned.

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Upon this clause *E. A.* was convicted at *Surry Lent assizes*, 1724, for shooting at *Lord O.*

^a *Davies* was tried for these offences at *Hereford summer assizes*, 1788, convicted, and sentenced to be hung; but as the word "*wilfully*" had been omitted in the indictment, a case was reserved for the opinion of the twelve judges in that respect, who held it to be a fatal omission; and he was thereupon discharged at the ensuing assizes. For further information in this case, vide *Le. Cr. Ca.* 431.

Where the offence is laid different ways, viz. in a dwelling-house, and at the parish at large, including *aiders*, &c. vide *Cro. Cir. Ass.* 20; where it is laid to be in the king's highway, *ibid.* 474.

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Indictment for felony, in sending a letter without a name subscribed, demanding money.

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That *C. D.* late of the parish of *St. Clement Danes*, in the county of *Middlesex*, labourer, being an ill-disposed person, and seeking wicked gain, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after the first day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on the eighteenth day of *November*, in the twenty-first year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, knowingly, unlawfully, wickedly, and feloniously did ^asend a certain letter in writing, bearing date the said eighteenth day of *November*, without * any name subscribed and signed thereto, directed to one *O. M.* by the name of *Mr. M.* demanding money, to wit, three pieces of gold coin, of the proper coin of this realm, called guineas, to the great damage of the said *O. M.* against the form of the statute in such case made and provided, to the evil example of all others in the like case offending, and against the peace of our said lord the king his crown and dignity. ^b

By said stat. 9 *Geo. I. ch. 22, § 1*, *If any person, from and after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing, he shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.* Made perpetual as before mentioned. *Vide 27 Geo. II. ch. 15, and 30 Geo. II. ch. 24, § 1.*

Indictment for feloniously procuring a person, by promise of money, to join in setting fire to a stack of hay.

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. Clement Danes*, in the county of *Middlesex*, labourer, being an evil-disposed person, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after the first day of *June*, in the year of our Lord one thousand seven hundred and * twenty-three, to wit, on the eighth day of *November*, in the twenty-first year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. with force and arms, at the parish of *St. John*, at *Hackney*, in the county aforesaid, did feloniously and maliciously procure *C. D.* by promise of money, to wit, of the sum of twenty shillings, to join him the said *A. B.* unlawfully, feloniously, and maliciously, in setting (a) fire to a certain stack of hay, belonging to *E. F.* in the farm-yard of him the said *E. F.* situate, lying, and being in the said parish of *St. John*, at *Hackney*, in the

(a) *Q.* If it should not be positively alleged that they did set fire, &c.

^a Delivering a threatening letter by the offender to the prosecutor is not sending it, within the meaning of 9 *Geo. I. ch. 22*; and 27 *Geo. II. ch. 15*, *Hammond's case*, *Le. Cr. Ca. 385*.

^b In a threatening letter, the threat must be direct and plain; but the bare delivery of the letter, for the purpose of conveying it, though sealed, is evidence of the knowledge of its contents; and the offender may be tried in the county where the prosecutor received it. *Girdwood's case*, *Le. Cr. Ca. 143*.
county

BLACK ACT.

county aforesaid, against the form of the statute in such case made and provided, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, to the great damage of the said *E. F.* and against the peace of our said lord the king, his crown and dignity.^a

By said stat. 9 Geo. I. ch. 22. § 1, *If any person or persons shall, by gift or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act, (as in the statute before is described,) he or they shall be adjudged guilty of felony, and suffer death as in cases of felony, without benefit of clergy. Made perpetual as before mentioned. Vide Burning, post.*

This act was occasioned by the injuries then lately before committed by several persons near Waltham, who appeared blacked and disguised in chaces, forests, &c. and is from thence called the Waltham Black Act.

* *Speedy way of bringing offenders to justice, by the same stat. 9 Geo. I. ch. 22, § 4, made perpetual by stat. 31 Geo. II. ch. 42.* [* 197]

AND for the more easy and speedy bringing the offenders against this act to justice, it is enacted, That if any person or persons shall be charged with being guilty of any of the offences (in the act mentioned) before any two or more of his majesty's justices of the peace of the county where such offence or offences were or shall be committed, by information of one or more credible person or persons, upon oath by him or them to be subscribed, such justices, before whom such information shall be made as aforesaid, shall forthwith certify, under their bands and seals, and return such information to one of the principal secretaries of state of his majesty, his heirs, or successors, who is hereby required to lay the same, as soon as conveniently may be, before his majesty, his heirs or successors, or their privy council, whereupon it shall and may be lawful for his majesty, his heirs or successors, to make his or their order in his or their privy council, thereby requiring and commanding such offender or offenders to surrender him or themselves, within the space of forty days, to any of his majesty's justices of the court of King's Bench, or to any of his majesty's justices of the peace, to the end that he or they may be forthcoming, to answer the offence or offences wherewith he or they shall so stand charged, according to the due course of law; which order shall be printed and published in the next London Gazette, and shall be forthwith transmitted to the sheriff of the county where the offence shall be committed, and shall, within six days after the receipt thereof, be proclaimed by him or his officers, between the hours of ten in the morning and two in the afternoon, in the market-places, upon the * respective market-days of two market-towns in the same county, near the place where such offence

Justices to return information to a secretary of state;

who is to lay the same before the king and council, who may make an order for their surrender.

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of a horrid murder. *Tork's case, Post. 70.*

^b A sodomite is prohibited to make a testament, or bequeath his goods and chattels. *Swinn. of Wills, part 2, § 18* Indictment for bestiality, *Cro. Cir. Aff. 7.*

^c It should be always stated the night of the next preceding day, though it be after twelve o'clock.

^d The prisoners were all tried on this indictment at *Hereford* summer assizes, 1789, convicted and executed. *Vide Doctrine of Indictments, ante, § 75.*

^e *Vide note under Lodgers, post.*

vidiom

PRECEDENTS of INDICTMENTS.

verdict and judgment of felony, without benefit of clergy; and that it shall be lawful to and for the court of King's Bench, or the justices of oyer and terminer or general gaol-delivery for the county where the offence is sworn in such information to have been committed, upon producing to them such order in council, under the seal of the said council, to award execution against such offender and offenders, in such manner as if he or they had been convicted and attainted in the said court of King's bench, or before such justice of oyer and terminer or general gaol delivery respectively.

Abettors and
concealers
deemed felons.

§ 5. Every person who, after the time appointed for the surrender of any person so charged, shall conceal, abet, or suffer him, knowing him to be so charged and required to surrender, being convicted thereof, shall suffer death as a felon, without the benefit of clergy.

Proviso, &c.
for trial accord-
ing to law.

§ 6. But this shall not hinder any judge, justice of the peace, magistrate, officer or minister of justice from apprehending and securing such offender, by the ordinary course of law; and if he be taken and secured before the time of surrender, he shall have his trial by due course of law.

Reward, &c.

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§ 12. If any person shall apprehend, or cause to be convicted, any of the above offenders, and shall be * killed or wounded, so as to lose an eye, or the use of any limb, in apprehending such offender, on proof thereof at the quarter sessions for the county, &c. where the offence was committed, the justices shall give a certificate thereof to the party so wounded, or the executors, &c. of the party killed, which shall intitle them to receive of the sheriff of the county 50 l. to be allowed to the sheriff in passing his accounts, which 50 l. the sheriff is to pay within thirty days from the day in which the certificate shall be shewn him, on forfeiture of 10 l. to the person to whom the certificate is given, for which, as well as for the fifty pounds, such person may bring his action upon the case against the sheriff, as for money had and received to his use.

Action against
the sheriff in
case of non-
payment.

§ 13. Prosecutions to be commenced within three years from the time of the offence committed, and not after.

May be tried in
any county.

§ 14. Every offence that shall be done or committed contrary to this act shall and may be enquired of, examined, tried, and determined in any county within the kingdom of England, in such manner and form as if the fact had been therein committed.

No corruption
of blood.

By the same section, No attainder for any offences, made felony by virtue of this act, shall work any corruption of blood, loss of dower, or forfeiture of lands or tenements, goods or chattels.

Arraignment.

Note. Therefore clerks of arraigns should not give that in charge, for jurors to inquire what lands and tenements, goods or chattels, a prisoner had at the time such felonies were committed.

It was felony by the ancient common law, and punished, according to some authors, with burning; according to others, with burying alive; but at this day,

By stat. 25 Hen. VIII. ch. 6, and 5 Eliz. ch. 17, It is punished in the same manner as other felonies which are excluded clergy. Not only he who doth the act is a principal, but he who is present, aiding and abetting him. 1 H. H. 670. 3 Inst. 59.

* Etymology of the words *Mankind* and *Womankind*, Fortesc. 95.

BURGLARY and HOUSEBREAKING.

tion (besides that given by 10 Will. III. ch. 23,) is forty pounds, 5 Ann. ch. 31, § 1. Vide Certificate to entitle apprehenders of housebreaker to forty pounds for apprehension, &c. *Practice of Juries*, ante, 19.

A burglar is he who in the night-time breaketh and entereth into a mansion-house of another, with intent to kill some reasonable creature, or commit some other felony within the same, whether his felonious intent executed or not. 3 Inst. 63. 1 H. H. 549. And accordingly the indictment runs as above; or if no theft actually committed, then say, With an intent the goods and chattels of the said M. G. in the said dwelling-house then and there being, then and there feloniously and burglariously to steal, take, and carry away; or with an intent the said M. G. then and there being, feloniously to kill and murder, against the peace, &c.

What is said to be night.

1. As long as the day continues, whereby a man's countenance may be discerned, it is called day; and when darkness comes, and day-light is past, so as by * the light of day you cannot discern the countenance of a man, then it is called night. 3 Inst. 63.

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What a breaking or entering.

2. Every entrance into the house by a trespasser is not a breaking, in this case; but there must be an actual breaking; as, if the door of a mansion house stand open, and the thief enter, this is not breaking: so it is if the window of the house be open, and a thief with a book or other engine draweth out some of the goods of the owner, this is no burglary, because there is no actual breaking of the house; but if the thief breaketh the glass of the window, and with a book or other engine draweth out some of the goods of the owner, this is burglary, for there was an actual breaking of the house. Ibid. 64.

3. As there must be a breaking, so there must be an entering, and it is deemed an entry when the thief breaketh the house, and his body, or any part thereof, as his foot or his arm, is within any part of the house; or when he putteth a gun into a window which he hath broken, or into a hole of the house which he hath made, with intent to murder or kill, this is an entry and breaking of the house: but if he doth barely break the house, without any such entry at all, this is no burglary. Ibid. ^a

4. And Lord Hale says, these acts amount to an actual breaking: opening the casement, or breaking the glass window, picking open the lock of a door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched. 1 H. H. 552.

5. By Stat. 12 Ann 1, ch. 7. § 3. If any person shall enter into the mansion-house of another, by day or night, without breaking the same, with an intent to commit felony, or being in such house shall commit any felony, and shall in the night-time break the said house to get out, he shall be guilty of burglary, and * ousted of the benefit of clergy, in the same manner as if he had broken and entered the house in the night-time with intent to commit felony. ^b

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6. By

^a Vide Hughes's case, Le. Cr. Ca. 342.

^b For an indictment under this statute, vide *Cro. Cir. Aff.* 27, with a count for stealing above the value of forty shillings at the same time and place.

The first count of this indictment must conclude against the form of the statute, because it created the offence; but the latter need not, as the same act, § 1, only takes away the benefit of clergy from the felon (except as to apprentices under fifteen years of age who shall rob their masters), it being an offence before at common law. Vide *Housebreaking and Houses*, post.

A pri-

PRECEDENTS of INDICTMENTS.

6. By stat. 13 Geo. III. ch. 38, § 29, it is enacted, *That if any person or person shall, by day or night, break into any house, shop, cellar, vault, or other place or building, or by force enter into any house, shop, cellar, vault, or other place or building, belonging to the plate-glass manufactory, or wherein the same shall be then carrying on, with intent to steal, cut, break, or otherwise destroy, any glass or plate-glass, wrought or unwrought, or any materials, tools, or implements used in, for, or about the making thereof, or any goods and wares belonging to the said manufactory, or shall steal, or wilfully or maliciously cut, break, or otherwise destroy any such glass materials, tools, or implements, every such offender, being thereof lawfully convicted, shall be deemed guilty of felony, and shall be transported to one of his majesty's colonies or plantations in America for a term not exceeding seven years.*

In some cases burglary may be committed without an actual breaking, viz.

7. *If divers come in the night to commit a burglary, and one of them break and enter, the rest of them standing to watch at distance, it is burglary in all.* 3 Inst. 64.

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* 8. *The servant opens a window to let in a thief, who comes in and steals; it is burglary in the stranger, but only larceny in the servant.* Dalt. edit. 1727, 487. But see Cornwall's case, Str. 881, contra.

9. *If a thief enter into a house through a hole made there before, it is no burglary.* Vide 3 Inst. 64. 1 H. H. 551, 552.

10. *Burglary may be committed in a mansion-house, though all persons be out. And so it is, if a man hath two houses, and sometimes lies in the one and sometimes in the other.* 1 H. H. 556.

11. *A chamber where a person usually lodges, in an inn of court, is a mansion-house.* Ibid.

12. *Breaking a church is burglary.* 1 Haw. 103.

13. *If a man be indicted for burglary, for that he feloniously and burglariously did break, &c. and steal, &c. the goods, &c. out of a dwelling-house, he may be acquitted of the burglary, and found guilty of simple felony, if the proof be not sufficient as to the burglary.* 1 H. H. 559, 561. See more of burglaries in Hale's P. C. Dalt. Just. ch. 151. Strange's Rep. 481. 881. 1 H. H. 547 to 566. Le. Cr. Ca. (Index) tit. Burglary.

Indictment for breaking a house in the day-time (no person being therein), and stealing goods of the value of five shillings. Vide House-breaking and Houses, post.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. K.* late of the parish of St. Clement Danes, in the county of Middlesex, labourer, on the day of _____ in the _____ year of the reign of our sovereign lord George the third, king of Great-Britain, &c. about the hour of eleven in the forenoon of the same day, with force and arms, at the *parish aforesaid, in the county aforesaid, the dwelling-house of *J. E.* there situate, feloniously did break and enter, (no person in the same dwelling-house then and there being), and two pewter

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A prisoner stealing in his own dwelling-house the property of another, is not an offence within the restriction of the latter section. *Elizabeth Thompson's case*, Le. Cr. Ca. 309.

* Vide Indictment. Gro. Cir. Aff. 177.

dishes,

B U R N I N G.

dishes, of the value of seven shillings [*here mention all the goods stolen*], of the goods and chattels of the said J. E. in the same dwelling-house then and there being found, feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

By stat. 39 Eliz. ch. 15, *This offence is felony without benefit of clergy; and the same reward^a to captors as in the burglary*, by stat. 3 M. ch. 9. 10 & 11 W. III. ch. 23. 5 Ann. ch. 31.

This statute of Eliz. requires an actual breaking, and not entering by the door's being open. 1 H. H. 548.

* B U R N I N G.

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Indictment for wilfully burning a house.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That W. G. late of the parish of Fryern-Barnet, in the county of *Middlesex*, labourer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, after the first day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on the second day of *June*, in the sixth year of the reign of our sovereign lord George the second, king of *Great-Britain*, &c. about the hour of two in the night of the same day, with force and arms, at the parish aforesaid, in the county aforesaid, a certain house^b of one G. S. there situate, feloniously, voluntarily, and maliciously did set fire to, and the same house then and there, by such firing as aforesaid, feloniously, voluntarily, and maliciously did burn and consume, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity^c.

Maliciously and voluntarily burning the house of another, by night or by day, is felony at common law. 1 Haw. 105.

** To set fire to any house, barn, or out-house, hovel, cock, mow, or stack of corn, straw, hay, or wood, was made felony without benefit of clergy by statute 9 Geo. I. ch. 22, § 1. Made perpetual by stat. 31 Geo. II. ch. 42. See 43 Eliz. ch. 13.^d*

Firing collieries, felony without clergy, 10 Geo. II. ch. 32. Vide Black Aa, ante.

[* 210]

^a It is presumed, that what is meant by this must come under the 5th of *Anne*, ch. 31, § 1, which enacts, that "all and every person or persons who shall apprehend and take any person or persons guilty of burglary, or the felonious breaking and entering of any house in the day-time, and prosecute to conviction, &c." shall have, over and above the certificate (of exemption from parish offices) given by 10 and 11 Will. III. ch. 23, the sum of forty pounds, within one month after such conviction, as the above statute of *Elizabeth* does not give a reward. The act of *Eliz.* was made for the purpose of protecting the property of poor persons who cannot afford to keep servants whilst they are attending divine service, or from home about their industrious affairs. *Vide* "House-breaking, Houses, and Lodgers," *post*.

^b *Sufficient without saying dwelling-house.* 1 Haw. 105. 3 Inst. 67.

^c Indictment for setting fire to *Portsmouth* dock-yard, and destroying naval stores, against 12 Geo. III. ch. 24. *Cro. Cir. Aff* 24.

John the Painter's case.

Indictment for a *misdemeanor* in setting fire to a place of confinement in a borough, *ibid.* 28.

^d By this statute (amongst other things) it is felony without benefit of clergy to burn any barn or stack of corn or grain within the counties of *Cumberland*, *Northumberland*, *Westmorland*, and the bishopric of *Durham*.

And

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And by 9 Geo. III. ch. 29, § 2, To burn or set fire to any wind saw-mill, or other wind or water mill, is felony without benefit of clergy. And by § 3, to burn or set fire to any machine or engine belonging to any mine, is felony, and transportation for seven years. See Burning, under "Felonies without clergy," Cro. Cir. Aff. 537, and Le. Cro. Ca. (Index) tit. Arson. Where it is committed by persons having an interest, &c. see Foff. 113.

C H U R C H - Y A R D.

For striking a person with a weapon in a church-yard.

[* 211] *Middlesex.* **T**HE jurors for our lord the king upon their oath present, That *H. B.* late of the parish of *St. Pancras*, in the county of *Middlesex*, gentleman, on the fourth day of *April*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, to wit, in a certain church-yard, * belonging to the same parish, and there situate, maliciously did strike one *M. P.* spinster, with a certain weapon made of iron and steel, called a hanger, which he the said *H. B.* then and there had and held in his right hand, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

With an intent to strike.

*If any weapon is drawn with an intent to strike another, then say, With his right hand did draw a certain weapon called a hanger, with an intent to strike * one M. P. with the same weapon, against the form of the statute, &c. and against, &c. as above. But it seems to be the better way, that if a person draws a weapon to the intent to strike, and actually strikes, to lay the indictment two ways; thus: With his right hand did draw a certain weapon, &c. against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said H. B. on the said fourth day of April, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, to wit, in a certain church-yard belonging to the same parish, and there situate, maliciously did strike, &c. as above.*

[* 212] *By stat. 5 & 6 Edw. VI. ch. 4, § 3. it is enacted, That if any person shall maliciously strike another with any weapon, in any church or church-yard, or shall draw any weapon in any church or church-yard to the intent to strike another with the same weapon, that then every person so offending, and thereof being convicted by verdict of twelve men, or by his own confession, or by * two lawful witnesses, before the justices of assize, justices of oyer and terminer, or justices of peace in their sessions, by force of this act, shall be adjudged, by the same justices before whom such person shall be convicted, to have one of his ears cut off: and if the person or persons so offending have none ears, whereby he or they should receive punishment as is before declared, that then he or they to be marked and burned in the cheek with an hot iron having the letter F, whereby he or they may be known to be fray-makers and fighters; and besides, that every such person to be and*

^a *Vide Doctrine of Indictments, ante, 96, § 8; and Chamley's case, Cro. Car. 464.*

stand

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stand ipso facto excommunicated, and be excluded from the fellowship and company of Christ's congregation.

He who strikes another in a church, &c. can no way excuse himself by shewing that the other assaulted him. 1 Haw. 139.

Indictment for digging up and carrying away a dead body out of a church-yard.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. C.* late of the parish of *St. Paul, Shadwell*, in the county of *Middlesex*, surgeon, on the sixth day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. about the hour of two in the night of the same day, with force and arms, at the parish aforesaid, in the county aforesaid, the church-yard belonging to the parish-church of the same parish unlawfully did enter, and a dead body of a certain woman, to the jurors aforesaid as yet unknown, then lately before laid in a coffin, and buried in the same church-yard, did then and there unlawfully dig up, take out of the said coffin, and carry * away, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. *

[* 213]

C O I N I N G.

An indictment of high treason for coining shillings.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *E. W.* late of the parish of *St. Margaret, Westminster*, in the county of *Middlesex*, labourer, and *M. W.* late of the same, labourer, not having the fear of God before their eyes, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, and contriving and intending our said lord the king, and all his people, craftily, falsely, deceitfully, feloniously, and traiterously to deceive and defraud, on the second day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, twenty pieces of false, feigned, and counterfeit money and coin, of pewter, lead, tin, and other mixt metals, to the likeness and similitude of the good, legal, and current money and silver coin of our said lord the king of this realm, called shillings, then and there falsely, deceitfully, feloniously, and traiterously did forge, counterfeit, and coin, against the duty of their allegiance, against the peace of our said lord the king, his * crown and dignity, and also against the form of the statute in that case made and provided.

[* 214]

It is declared by the statute of 25 Edw. III. stat. 5, ch. 2, That if a man counterfeit the king's great or privy seal, or his money of England, and if a man bring false money into this realm, counterfeit to the money of England, as money called^b Luthburgh, or other like

* Taking up dead bodies, though for the purpose of dissection, is an indictable offence. 2 Term Rep. 733. Vide also *Doctrine of Indictments*, ante, 101, § 37.

^b Luthburgh was a base coin, used in the days of king Edw. III. coined beyond sea to the likeness of English money, and brought in, to deceive the king and his subjects.

money

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money of England, knowing the money to be false, to merchandize or make payment in deceit of our said lord the king and his people, he ought to be judged guilty of treason.

By stat. 1 Mar. stat. 2, ch. 6, If any person or persons falsely forge and counterfeit any such kind of coin, of gold or silver, as is not the proper coin of this realm, and is and shall be current within this realm by the consent of the queen, her heirs or successors; or if any person or persons do falsely forge or counterfeit the queen's sign manual, privy signet, or privy seal; that then every such offence shall be deemed and judged high treason, and the offenders therein, their counsellors, procurers, aiders, and abettors, being convicted, according to the laws, of any of the said offences, shall be likewise deemed and judged traitors against the queen, her heirs and successors, and the realm, and shall suffer and have such pains of death, forfeiture of lands, goods, and chattels, and lose the privilege of all sanctuary, as in cases of high treason is used and ordained.

[* 215]

By stat. 1 & 2 Phil. & M. ch. 11. § 2, it is enacted, That if any person or persons shall bring, from parts beyond the sea, into this realm, or into any of the dominions of the same, any such false counterfeit coin or money, being current within this realm, knowing the same coin or money to be false and counterfeit, * to the intent to utter or make payment with the same within this realm, or any the dominions of the same, by merchandizing or otherwise; that all and every such persons so offending as aforesaid, their counsellors, procurers, aiders, or abettors in that behalf, shall be deemed and adjudged to be offenders in high treason, and shall suffer, after lawful conviction or attainder thereof, such pains of death, loss and forfeiture of land, goods, and chattels, as other offenders shall do in cases of high treason.

§ 3. ^a And further, That all and every person or persons, that shall at any time be accused or impeached of any offences contained and provided for in this statute, or of any other offence or offences, concerning the impairing, counterfeiting, or forging of any coin current within this realm, shall and may be indicted, arraigned, tried, convicted, or attainted, by such like evidence, and in such manner and form, as hath been used and accustomed within this realm, at any time before the first year of the reign of our late sovereign lord king Edward VI. any statute, custom, law, or usage to the contrary thereof in any wise notwithstanding.

^a Note. To clip, wash, round, or file, is treason, stat. 5 Hen. V. ch. 6. 5 Eliz. ch. 11., § 2; or impair the coin, stat. 25 Edw. III. stat. 5. ch. 13; 18 Eliz. ch. 1. b

Indictment of high treason for having goods for coining in their custody.

[* 216]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *E. W.* late of the parish of St. Giles in the Fields, in the county of *Middlesex*, labourer, and *J. W.* late of the same, labourer, not being persons employed, nor any one of them a person employed, in or for the mint or *mints of our said lord the king, in the Tower of London or elsewhere, and for the use and service of the said mints only, not being persons lawfully authorized, nor any one of them lawfully authorized, by the lord high treasurer of Great-Britain, or lords commissioners of the treasury of our said lord the king, and not having the fear of God be-

^b Vide Table to the Statutes, Cro. Cir. Aff. 537, 538.

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fore their eyes, but being moved and seduced by the instigation of the devil, after the fifteenth day of May, in the year of our Lord one thousand six hundred and ninety-seven, to wit, on the first day of May, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one pair of moulds made of chalk, upon which then and there were made and impressed the figure, resemblance, and similitude of the sides of the lawful silver coin of this kingdom called sixpences, (each of which said moulds would then make and impress the figure, resemblance, and similitude of one of the sides of the lawful silver coin of this kingdom called sixpences) without any lawful authority or sufficient excuse for that purpose, knowingly and traiterously had in the custody and possession of them the said E. W. and J. W. in the dwelling-house of R. W. situate at the parish aforesaid, in the county of Middlesex aforesaid, against the duty of their allegiance, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in that case made and provided.

Indictment for hiding and concealing coining tools.

As in the above indictment, down to knowingly and traiterously, in the dwelling-house of * R. W. situate at the parish aforesaid, in the county of Middlesex aforesaid, did hide and conceal, against the duty of their allegiance; against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in that case made and provided.

[* 217]

By stat. 8 & 9 Will. III. ch. 26, § 1, it is enacted, That from and after the fifteenth day of May, one thousand six hundred and ninety-seven, no smith, engraver, founder, or other person or persons whatsoever (other than and except the persons employed or to be employed in or for his majesty's mint or mints, in the Tower of London or elsewhere, and for the use and service of the said mints only, or persons lawfully authorized by the lords commissioners of the treasury, or lord high treasurer of England, for the time being) shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending, of any puncheon, counter-puncheon, matrix, stamp, dye, pattern, or mould, of steel, iron, silver, or other metal or metals, or of spaud, or fine founders earth, or sand, or of any other materials whatsoever, in or upon which there shall be, or be or be made or impressed, or which will make or impress, the figure, stamp, resemblance, or similitude of both or either of the sides or fluts of any gold or silver coin current within this kingdom; nor shall knowingly make or mend, or begin or proceed to make or mend, or assist in making or mending, of any edger or edging tool, instrument, or engine, not in common use in any trade, but contrived for making of money round the edges with letters, grainings, or other marks or figures resembling those on the edges of money coined in his majesty's mint, nor any press for coining, nor any cutting-engine, for cutting round blanks by force of a screw out of flatted bars of gold, silver, or other metal; nor shall knowingly buy or sell, hide or conceal, or, without lawful authority or sufficient excuse for that purpose, knowingly have in his, her, or their houses, custody, or possession, any such puncheon, counter-

As to tradesmen employed in the mint, tools, &c.

[* 218]

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counter-puncheon, matrix, stamp, dye^a, edger, cutting-engine, or other tool or instrument before mentioned; and if any smith, engraver, founder, or other person or persons whatsoever, (other than and except as aforesaid) shall offend in any of the matters or things aforesaid, then all and every such offender and offenders, their counsellors, procurers, aiders, and abettors, shall be, and is and are hereby adjudged to be, guilty of high treason; and being of the said offences, or any of them, convicted or attainted, according to the order and course of the laws of this realm, shall suffer death, as in case of high treason.

§ 2. Persons conveying out of the mint any puncheon, &c. and concealing the same, to be guilty of high treason.

§ 3. Like penalty on persons marking the edging of counterfeit coin.

§ 4. Of colouring, &c. any coin resembling the current coin.

§ 5. Puncheon, dye, &c. found in the possession of any person not employed in the mints, may be seized, and produced in evidence.

Ibid. Counterfeit money produced in evidence to be afterwards cut to pieces.

§ 6. Persons blanching copper for sale, or mixing blanchéd copper with silver, &c. or taking or paying counterfeit milled money, &c. are guilty of felony, and shall suffer death.

§ 7. Attainder by this act not to make corruption of blood.

Ibid. By what evidence offenders may be convicted.

N. B. This act expired at the end of the then next session of parliament: but by stat. 7 Ann. ch. 25, § 1, *the stat. 8 & 9 Will. III. ch. 26, is made perpetual; and by § 2, the makers and menders of tools are to be prosecuted within six months.

[* 219]

High treason to
gild silver coin,
&c.

By stat. 15 Geo. II. ch. 28, it is enacted, That if any person shall wash, gild, or colour any lawful silver coin called a shilling or a sixpence, or any counterfeit or false shilling or sixpence, or add to or alter the impression, or any part of the impression, of either side of any such lawful or counterfeit shilling or sixpence, with intent to make such shilling resemble or look like, or pass for a piece of lawful gold coin called a guinea; or with intent to make such sixpence resemble or look like, or pass for a piece of lawful gold coin called a half guinea; or shall file or any ways alter, wash, or colour any of the brass monies called halfpennies or farthings, or add to or alter the impression, or any part of the impression, of either side of a halfpenny or farthing, with intent to make a halfpenny resemble or look like, or pass for a lawful shilling, or with intent to make a farthing resemble or look like, or pass for a lawful sixpence, the person and persons so offending in any of the matters aforesaid, their counsellors, aiders, abettors, and procurers, shall be adjudged to be guilty of high treason.

Uttering false
money know-
ingly six months
imprisonment,
and security for
two years more.

§ 2. And if any person shall utter or tender in payment any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall be thereof convicted, such person so offending shall suffer six months imprisonment, and find sureties for his or her good behaviour for six months more, to be computed from the end of the said first six months; and if the same person shall

^a Indictment against two persons for having a dye in their custody, for the purpose of coining shillings, Cro. Cir. Aff. 45, who were convicted at Stafford summer assizes, 1784; one of whom was drawn and executed. See *The King* against Lennard, 2 Black. Rep. 807.

after-

afterwards be convicted a second time of the like offence of uttering or tendering in payment any false or counterfeit money, knowing the same to be so, such person shall, for such second offence, suffer two years imprisonment, and find sureties for his or her good behaviour for two years more, to be * computed from the end of the said first two years; and if the same person shall afterwards offend a third time in uttering or tendering in payment any false or counterfeit money, knowing the same to be so, and shall be convicted of such third offence, he or she shall be adjudged to be guilty of felony, without benefit of clergy.

For the second offence, two years imprisonment, and security for two years.

[* 220]

Third offence felony without clergy.

§ 3. And if any person shall utter or tender in payment any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall, either the same day or within the space of ten days then next, utter or tender in payment any more, or other false or counterfeit money, knowing the same to be false or counterfeit, to the same person or persons, or to any other person or persons, or shall at the time of such uttering or tendering have about him or her, in his or her custody, one or more piece or pieces of counterfeit money, besides what was so uttered or tendered, then such person so uttering or tendering the same shall be deemed and taken to be a common utterer of false money, and being thereof convicted shall suffer a year's imprisonment, and shall find sureties for his or her good behaviour for two years more, to be computed from the end of the said year; and if any person having been once so convicted as a common utterer of false money shall afterwards again utter or tender in payment any false or counterfeit money to any person or persons, knowing the same to be false or counterfeit, then such person being thereof convicted shall for such second offence be adjudged to be guilty of felony without benefit of clergy.

Uttering false money twice within ten days, &c. or having more counterfeit money in possession.

§ 4. And that the person or persons convicted of any of the treasons and felonies respectively herein before mentioned shall suffer death, as in case of high treason and felony respectively; but the blood of the heirs of such offender shall not be thereby corrupted, nor shall his wife thereby lose her dower.

Blood not to be corrupted.

* § 5. And that the person and persons that shall be guilty of any of the treasons, felonies, or crimes aforesaid, shall be indicted, arraigned, tried, and convicted by such like evidence, and in such manner, as is now used and allowed against any offenders for counterfeiting the lawful coin, provided that there shall be no prosecutions for any of the offences made treason or felony by this act, unless such prosecution be commenced within six months next after such offence shall be committed.

[* 221]
Evidence, &c.

§ 6. And whereas the coining or counterfeiting of the copper money of this kingdom is only a misdemeanor, and the punishment of ten very small: if any person shall make, coin, or counterfeit any brass or copper money, commonly called a halfpenny or a farthing, such person offending therein, and his, her, and their aiders, abettors, and procurers, being thereof convicted, shall suffer two years imprisonment, and find sureties for his or her good behaviour for two years more, to be computed from the end of the said first two years.

Coiners of copper money to be imprisoned two years.
Vide II Geo. III. ch. 40.

§ 7. Whoever shall apprehend any person or persons who have committed any of the offences hereby made high treason or felony, or who shall have made or counterfeited any of the copper money aforesaid, and shall prosecute such offenders to conviction, shall have and receive of the sheriff of the county, &c. for every such offender so convicted of any of the said treasons or felonies, the sum of forty

Forty pounds for convicting a person of treason and felony, and ten pounds for copper money, &c.

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pounds; and for every such offender so convicted of counterfeiting any of the said copper money, the sum of ten pounds, without paying any fee for the same, within one month after conviction, on tendering a certificate under the hand of the judge, &c.

Offenders discovering, &c.

§ 8. Whoever, being out of prison, shall commit any of the offences aforesaid, and shall afterwards discover two or more persons who shall have committed any of the said offences, so as such two or more persons shall be thereof convicted, such discoverers shall have his majesty's pardon.

[* 222]
Manner of prosecuting a second offence in another county.

* § 9. If any person shall be convicted of uttering or tendering any false or counterfeit money as aforesaid, and shall afterwards be guilty of the like offence in any other county or city, the clerk of the assize, or clerk of the peace for the county or city where such first conviction was so had, shall, at the request of the prosecutor, or any other on his majesty's behalf, certify the same by a transcript in a few words, containing the effect and tenor of such conviction; for which certificate two shillings and sixpence, and no more, shall be paid; and such^a certificate, being produced in court, shall be sufficient proof of such former conviction.

And by 11 Geo. III. ch. 40. If any person shall make, coin, or counterfeit any of the copper monies of this realm, commonly called an halfpenny or farthing, or shall buy, sell, take, receive, pay, or put off any counterfeit copper money, not melted down or cut in pieces, at or for a lower rate or value than by its denomination it doth import or was counterfeited for, he shall be guilty of felony (but within clergy).^b

Offences in counterfeiting money excepted out of General Pardon, 20 Geo. II. ch. 52.—See Foster's Crown Law, 227.

[* 223]

* COMPOUNDING FELONY.

Indictment for compounding felony.

That *W. D.* came before a justice of the peace;

Middlesex. **T**HE jurors for our lord the king upon their oath, present, That on the sixteenth day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. one *W. D.* at the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, in his proper person, came before *J. P.* esq. then and yet being one of the justices of our said lord the king, assigned to keep the peace of our lord the king in and for the said county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, and then and there, upon his oath aforesaid, did charge and accuse one *M.* the wife of *P. J.* with feloniously stealing, taking, and carrying away one silver spoon and two silk handkerchiefs, of the goods and chattels of the said *W. D.* upon which the said *J. P.* then and there issued out his warrant under his hand and seal, made in due form of law, for the apprehending and taking the said *M.* to answer and be examined of and concerning the felony aforesaid, on her as aforesaid charged: and that afterwards, on the said sixteenth day of *December*, in the year aforesaid, the said *M.* at the parish aforesaid, in the county aforesaid, for the said felony,

and did charge, &c.

Warrant issued to apprehend the offender,

^a For which certificate, *vide Cro. Cir. Aff.* 127.

^b Indictment for coining copper money, *ibid.* 128.

For putting off false copper money at a lower rate than by its denomination it imported, *ibid.* 130.

and

COMPOUNDING QUI TAM ACTION.

and by virtue of the said warrant, was taken and arrested, and then and there was brought before the said *J. P.* the justice aforesaid, and then and there, before the same justice, of and concerning the same felony was examined: upon which the said *J. W.* the justice aforesaid, then and there did make a certain warrant under * his hand and seal, in due form of law, directed to the keeper of *Newgate*, or his deputy, to receive into custody the body of the said *M. J.* so charged with felony as aforesaid, and her in custody safely to keep until she should be discharged by due course of law. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *W. D.* late of the parish of *St. George the Martyr*, in the county aforesaid, tallow-chandler, and *J. D.* late of the same, broker, well knowing the premises, and each of them well knowing the same, but contriving and intending, unlawfully and unjustly, to pervert the due course of law in this behalf, and to cause and procure the said *M. J.* for the felony aforesaid to escape with impunity, afterwards, to wit, on the same day and year aforesaid, at the parish of *St. Andrew, Holburn*, aforesaid, in the county aforesaid, unlawfully, and for wicked gain sake, did take upon themselves to compound the said felony, on the behalf of the said *M. J.* and then and there did exact, receive, and have the said *P. J.* the husband of the said *M.* twenty-six shillings, in monies numbered, for and as a reward for compounding the said felony, and desisting from all further prosecution against the said *M. J.* for the felony aforesaid, to the great hindrance of justice, to the evil example of all others in the like case offending, in contempt of our said lord the king and his laws, and against the peace of our said lord the king, his crown and dignity.

who was brought before the justice.

[* 224] Commitment.

That said *J. W.* and one *J. D.*

did compound, and receive money as a reward, &c.

* *Information in the (a) King's Bench by the king's coroner and attorney for compounding a qui tam action (which had been commenced in that court on the 31 Eliz. ch. 6, § 8, for corruptly resigning a benefice) without leave of the court.*

[* 225] Information exhibited at the assizes, &c. *Cro. Cir. Aff. 70.*

Middlesex, **B**E it remembered, That *J. B.* esquire, coroner and to wit. attorney of our sovereign lord the now king, in the court of our said lord the king, before the king himself, who for our said present sovereign lord the king in this behalf prosecuteth, in his proper person cometh here into the court of our said lord the king, before the king himself, at *Westminster*, on in this same term, and for our said lord the king giveth the court here to understand and be informed, that *G. B.* clerk, heretofore, to wit, on the thirteenth day of *August*, in the twenty-eighth year of clerk, the reign of the lord *George* the second, late king of *Great-Britain*, &c. was incumbent of a certain benefice with cure of souls, that was incumbent, is to say, of the church of *G.* in the county of *S.* and being so &c. incumbent thereof, he the said *G. B.* afterwards, to wit, on the same day and year aforesaid, resigned the said benefice, to wit, at *Westminster*, in the said county of *Middlesex*. And the said coroner and attorney of our said present lord the king, for our said present lord the king, giveth the court here further to understand and be informed, that afterwards, to wit, in the term of *St. Hilary*, in the twenty-ninth year of the reign of our said late lord the king, a certain suit by bill, without the writ of the said late king, was commenced and prosecuted in the name of one *A. M.* as suing in that behalf, as well for our said late king as himself, against the said

who resigned, &c.

That a suit was commenced, in the name of one *A. M.* in *B. R.*

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[* 226]	<i>G. B.</i> in the court of the said late king, before the said * late king himself, (the said court then being at <i>Westminster</i> aforesaid, in the county of <i>Middlesex</i>.) in a plea of debt for two thousand pounds, wherein the said <i>G. B.</i> was declared against, that by a certain act of parliament made at a session of parliament of the lady <i>Elizabeth</i>, late queen of <i>England</i>, begun and holden at <i>Westminster</i> the fourth day of <i>February</i>, in the one and thirtieth year of her reign, intituled, "<i>An act against abuses in election of scholars and presentation to benefices</i>," it was enacted and provided, by the authority of the same parliament (among other things) That if any incumbent of any benefice with the cure of souls, after the end of forty days next after the end of the same session of that parliament, did or should corruptly resign or exchange the same, or corruptly take for or in respect of the resigning or exchanging of the same, directly or indirectly, any pension, sum of money, or benefit whatsoever, that then as well the giver as the taker of any such pension, sum of money, or other benefit corruptly, should lose double the value of the sum so given, taken, or had, the one moiety thereof to be to the late queen's majesty, her heirs and successors, and the other moiety to him or them that should sue for the same, by action of debt, bill, or information, in any of her said late majesty's courts of record, in which no essoin, protection, or wager of law or privilege, should be admitted or allowed, as by the said act (amongst other things) more fully appeared; and that the aforesaid session of the said parliament ended on the twenty-ninth day of <i>March</i> then next following, to wit, at <i>Westminster</i> aforesaid; and that the church of <i>G.</i> in the county of <i>S.</i> at the aforesaid time of making the act of parliament aforesaid, and long before, was, and continually from thenceforth until the commencement of the said suit had been, and then was, a benefice with the cure of souls, to wit, at <i>G.</i> aforesaid, in the said county, * and within the diocese of <i>Chichester</i>; and that the said <i>G. B.</i> on the thirteenth day of <i>August</i>, in the year of our Lord one thousand seven hundred and fifty-four, and long before, to wit, at <i>G.</i> aforesaid, was the undoubted incumbent of the said benefice with cure of souls; and that afterwards, and after the end of forty days next after the end of the said session of the parliament aforesaid, to wit, on the said thirteenth day of <i>August</i>, in the said year of our Lord one thousand seven hundred and fifty-four, at <i>G.</i> aforesaid, in the said county, it was corruptly agreed by and between the said <i>G. B.</i> (he the said <i>G. B.</i> then being the undoubted incumbent of the said benefice with the cure of souls as aforesaid) and one <i>C. R.</i> that he the said <i>G. B.</i> should resign the said benefice, to the end and intent that he the said <i>C. R.</i> might upon such resignation be instituted and inducted into the said benefice with the cure of souls; and that the said <i>C. R.</i> should pay to the said <i>G. B.</i> for and in respect of such resignation, a large sum of money, to wit, the sum of one thousand pounds; and that in pursuance and in performance of the said corrupt agreement, he the said <i>G. B.</i> afterwards, to wit, on the same day and year last mentioned, then being the undoubted incumbent of the said benefice with the cure of souls at <i>G.</i> aforesaid, corruptly resigned his said benefice with the cure of souls, and the said <i>C. R.</i> then and there paid to the said <i>G. B.</i> the said sum of one thousand pounds for and in respect of the said resignation; which said sum of one thousand pounds the said <i>G. B.</i> then and there corruptly took, received, and accepted of and from the said <i>C. R.</i> for and in respect of the said resigning the said benefice with the cure of souls by the said
Declaration.	
Recital of 31 Eliz.	
As by, &c.	
[* 227]	
Corrupt agreement between the said <i>G. B.</i> and one <i>C. R.</i>	
That in pursuance, &c.	
Resignation;	
money received in respect thereof.	

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said *G. B.* as aforesaid; and that afterwards, to wit, on the said day and year last aforesaid, the said benefice with the cure of souls being vacant by the said resignation * of the said *G. B.* he the said *C. R.* [* 228] was thereupon instituted and inducted into the said benefice with the cure of souls, by reason whereof, and by force of the act of parliament aforesaid, an action had accrued to the said lord the late king, and the said *A.* who sued as aforesaid, to demand and have of the said *G. B.* the sum of two thousand pounds, of good and lawful money of *Great-Britain*, the same being double the value of the said sum of one thousand pounds so corruptly taken, received, and accepted by the said *G. B.* of and from the said *C. R.* as aforesaid. Induction of *G. R.*

Nevertheless, the said *G. B.* although often requested, had not rendered to our said lord the late king, and the said *A.* who sued as aforesaid, the said sum of two thousand pounds, but until the commencement of the said suit had altogether denied, and then did deny, to render the same to them, to the damage of the said *A.* who sued as aforesaid in that behalf of twenty pounds, and thereupon, as well for the said lord the late king as himself, he brought suit, &c. And afterwards, that is to say, on *Wednesday* next after fifteen days from the day of *Easter*, in *Easter* term, in the twenty-ninth year aforesaid, in the court of the said late lord the king, before the said late king himself, (the said court being then at *Westminster* aforesaid,) came the said *G. B.* by *C. W.* his attorney; and the said *G. B.* defended the wrong and injury, when, &c. and said that he did owe to the said lord the late king and the said *A.* who sued in that behalf, as well for the said late lord the king as for himself, the said two thousand pounds, or any part thereof, in manner and form as the said *A.* who sued as aforesaid, complained against him, and of that he put himself on the country, as by the record and proceedings thereof now remaining in the court of our said lord the present king, before the king himself, at *Westminster* aforesaid, fully appears. And the said * coroner and attorney of our said present lord the king, for our said lord the king, gives the court here further to understand and be informed, that the said suit so commenced and prosecuted in the name of the said *A. M.* as aforesaid, was really and in fact commenced and prosecuted by *J. H.* late of *Westminster*, in the county of *Middlesex*, broker, and under his direction, and that the name of the said *A. M.* was made use of in the said suit in trust for and for the use and benefit of the said *J. H.* to wit, at *Westminster* aforesaid, in the said county of *Middlesex*. And the said coroner and attorney of our lord the present king, for our said lord the king, gives the court here further to understand and be informed, that the said *J. H.* late of *Westminster* aforesaid, in the said county of *Middlesex*, broker, not regarding the statute in such case made and provided, nor fearing the pains and penalties therein contained, afterwards, and whilst the said suit was depending in the said court of the said late king, before the said late king himself, that is to say, on the sixth day of *July*, in the thirty-first year of the reign of the said late king, at *Westminster* aforesaid, in the said county of *Middlesex*, he the said *J. H.* did unlawfully compound and agree with the said *G. B.* so surmised to have offended against the penal statute above particularly mentioned, for the said offence, pretended to have been committed by him in manner aforesaid, without the order or consent of the said court of the said late king, before the said late king himself, in which said court the said suit was then depending, by then and there agreeing to accept and accepting

Conclusion of the declaration.

G. B.'s appearance, who pleaded *nil debet*.

As by the record, &c.

[* 229]

Averment that *A. M.* sued in trust for *J. H.*

That the said *J. H.* did compound with *G. B.* without the order, &c.

PRECEDENTS of INDICTMENTS.

by accepting a promissory note.

[* 230]
in contempt,
&c.

Second count,
that *J. H.* in
the name of
A. M.

impleaded *G. B.*
stating the sub-
stance shortly.

Resignation for
money.

[* 231]

That *G. B.*
made answer,
&c.

That *J. H.* did
compound, &c.

by agreeing to
accept and ac-
cepting a pro-
missory note,
&c.

accepting from the said *G. B.* a promissory note of him the said *G. B.* for the payment of a large sum of money, to wit, the sum of one hundred pounds, to him the said *J. H.* or order, at a certain time then to come, and long since past, as and for a composition for the said offence, pretended to have been committed by * the said *G. B.* as aforesaid, in contempt of the said late lord the king and his laws, to the great obstruction of justice, to the evil and pernicious example of all others in the like case offending, against the peace of the said late lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. And the said coroner and attorney of our said lord the present king, for our said lord the present king, gives the court here further to understand and be informed, that the said *J. H.* heretofore, to wit, in the term of *St. Hilary*, in the twenty-ninth year of the reign of the said lord *George* the second, late king of *Great-Britain*, &c. in the name of one *A. M.* as prosecuting in that behalf, as well for the said late king as for himself, by bill, without the writ of the said late king, impleaded and caused to be impleaded one *G. B.* in the court of the said late king, before the said late king himself, (the said court being then at *Westminster* aforesaid, in the said county of *Middlesex*,) in a plea of debt for two thousand pounds, as forfeited by the said *G. B.* for an offence pretended to have been committed by him against a certain penal statute made in the parliament of the lady *Elizabeth*, late queen of *England*, at a session thereof holden at *Westminster* in the thirty-first year of her reign, intituled, "*An act against abuses in election of scholars and presentation to benefices*," by reason of a pretended corrupt resignation of a certain benefice with cure of souls, to wit, the church of *G.* in the county of *S.* pretended to have been made by the said *G. B.* alledged to have been the incumbent of the said benefice with cure of souls, and also by reason of his having corruptly taken, for and in respect of the said pretended resignation, a large sum of * money, to wit, one thousand pounds, as pretended. And the said coroner and attorney of our said present lord the king, for our said present lord the king, gives the court here further to understand and be informed, that afterwards, to wit, in *Easter* term, in the twenty-ninth year aforesaid, in the said court of the said late lord the king, before the said late king himself, (the said court then also being at *Westminster* aforesaid, in the said county of *Middlesex*,) the said *G. B.* made answer unto the said suit. And the said coroner and attorney of our said lord the present king, for our said lord the present king, giveth the court here further to understand and be informed, that afterwards, and whilst the said last-mentioned suit was depending in the court of the said late king, before the said late king himself, that is to say, on the sixth day of *July*, in the thirty-first year of the reign of the said late king, at *Westminster* aforesaid, in the said county of *Middlesex*, he the said *J. H.* did unlawfully compound and agree with the said *G. B.* so surmised to have offended against the said penal statute above particularly mentioned, for the said offence, pretended to have been committed by him as last aforesaid, without the order or consent of the said court of the said late king, before the said late king himself, in which said court the said suit was then depending, by then and there agreeing to accept and accepting from the said *G. B.* a promissory note of him

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the said *G. B.* for the payment of a large sum of money, to wit, the sum of one hundred pounds, to him the said *J. H.* or order, at a certain time then to come, and long since past, as and for a composition for the said offence, pretended to have been committed by the said *G. B.* as last aforesaid, in contempt of the said late lord the king and his laws, to the great obstruction of justice, to the evil and pernicious example * of all others in the like case offending, against the peace of the said late lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. And the said coroner and attorney of our said lord the present king, for our said lord the present king, giveth the court here further to understand and be informed, that the said *J. H.* heretofore, to wit, in the term of *St. Hilary*, in the twenty-ninth year of the reign of the said lord *George* the second, late king of *Great-Britain*, &c. in the name of one *A. M.* as prosecuting in that behalf, as well for the said late king as for himself, by bill, without the writ of the said late king, impleaded and caused to be impleaded one *G. B.* in the court of the said late king, before the said late king himself, (the said court being then at *Westminster* aforesaid, in the said county of *Middlesex*,) in a plea of debt for two thousand pounds, as forfeited by the said *G. B.* for an offence pretended to have been committed by him against a certain penal statute made in the parliament of the lady *Elizabeth*, late queen of *England*, at a session thereof holden at *Westminster* in the thirty-first year of her reign, intituled, "*An act against abuses in election of scholars and presentation to benefices*," by reason of a pretended corrupt resignation of a certain benefice with the cure of souls, to wit, the church of *G.* in the county of *S.* pretended to have been made by the said *G. B.* alleged to have been the incumbent of the said benefice with the cure of souls. And the said coroner and attorney of our said present lord the king, for our said present lord the king, gives the court here further to understand and be informed, that afterwards, to wit, in *Easter* term, in the twenty-ninth year aforesaid, in the said court of the said late lord the king, before the said late king himself, (the said court then being also at *Westminster* aforesaid, in the said county of *Middlesex*,) the said *G. B.* made answer unto the said suit. And the said coroner and attorney of our said lord the present king, for our said lord the present king, giveth the court here further to understand and be informed, that afterwards, and whilst the said last-mentioned suit was depending in the court of the said late king, before the said late king himself, that is to say, on the said sixth day of *July*, in the thirty-first year of the reign of the said late king, at *Westminster* aforesaid, in the said county of *Middlesex*, he the said *J. H.* did unlawfully compound and agree with the said *G. B.* so furnished to have offended against the said penal statute above particularly mentioned, for the said offence, pretended to have been committed by him as last aforesaid, without the order or consent of the said court of the said late king, before the said late king himself, in which said court the said suit was then depending, in contempt of the said late lord the king and his laws, to the great obstruction of justice, to the evil and pernicious example of all others in the like case offending, against the peace of the said late lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. And the said coroner and attorney of our said lord the present king, for our said lord the present king, gives the court here further to understand and be informed, that the said

[* 232]

Third count
same as the
second, except
omitting the re-
ceipt of money
for resigning,
&c. and the
note for com-
pounding.
Impleaded, &c.

[* 233]

G. B. made
answer, &c.

Did compound
and agree, &c.

in contempt,
&c.

Fourth count
similar to the
second, except
stating, an in-
tention to stop
the course of
justice, &c.

J. H.

PRECEDENTS of INDICTMENTS.

Impleaded, &c.

[* 234]

G. B. made answer,

that J. H. intending to stop the course of justice,

did compound, &c.

[* 235]

by accepting a promissory note,

in contempt, &c.

Fifth count, omitting the former defendant's answer, and all that relates to receiving money, &c.

J. H. heretofore, to wit, in the term of St. Hilary, in the twenty-ninth year of the reign of the said lord George the second, late king of Great-Britain, &c. in the name of one A. M. as prosecuting in that behalf, as well for the said late king as for himself, by bill, without the writ of the said late king, impleaded and caused to be impleaded one G. B. in the court of the said late king, before the said late king himself, (the said court being then at *Westminster*, in the said county of *Middlesex*.) in a plea of debt for two thousand pounds, as forfeited by the said G. B. for an offence * pretended to have been committed by him against a certain penal statute made in the parliament of the lady *Elizabeth*, late queen of *England*, at a session thereof holden at *Westminster* in the thirty-first year of her reign, intituled, "*An act against abuses in election of scholars and presentation to benefices*," by reason of a pretended corrupt resignation of a certain benefice with the cure of souls, to wit, the church of G. in the county of S. pretended to have been made by the said G. B. alledged to have been the incumbent of the said benefice with the cure of souls, and also by reason of his having corruptly taken for and in respect of that pretended resignation a large sum of money, to wit, one thousand pounds, as pretended. And the said coroner and attorney of our said present lord the king, for our said present lord the king, giveth the court here further to understand and be informed, that afterwards, to wit, in *Easter* term, in the twenty-ninth year aforesaid, in the said court of the said late lord the king, before the said late king himself, (the said court then being at *Westminster* aforesaid, in the said county of *Middlesex*.) the said G. B. made answer unto the said suit. And the said coroner and attorney of our said lord the present king, for our said lord the present king, giveth the court here further to understand and be informed, that the said J. H. wrongfully and unlawfully designing and intending to stop the course of justice against the said G. B. for the said offence, pretended to have been committed by him as aforesaid, afterwards, and whilst the said last-mentioned suit was depending in the court of the said late king, before the said late king himself, that is to say, on the sixth day of *July*, in the thirty-first year of the reign of the said late king, at *Westminster* aforesaid, in the said county of *Middlesex*, he the said J. H. did unlawfully compound with the said G. B. so * surmised to have offended against the penal statute above particularly mentioned, for the said offence, pretended to have been committed by him, without the order or consent of the said court of the said late king, before the said late king himself, in which said court the said suit was then depending, and without any lawful authority whatsoever, by then and there agreeing to accept and accepting from the said G. B. a promissory note of him the said G. B. for the payment of a large sum of money, to wit, the sum of one hundred pounds, to him the said J. H. or order, at a certain time then to come, and long since past, as and for a composition for the said offence, pretended to have been committed by the said G. B. in contempt of our said late lord the king and his laws, to the great obstruction of justice, to the evil and pernicious example of all others in the like case offending, against the peace of the said late lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. And the said coroner and attorney of our said lord the present king, for our said lord the present king, gives the court here further to understand and be informed, that the said J. H. heretofore, to wit, in the term

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of *St. Hilary*, in the twenty-ninth year of the reign of the said lord *George* the second, king of *Great-Britain*, &c. in the name of one *A. M.* as prosecuting in that behalf, as well for the said late king as for himself, by bill, without the writ of the said late king, impleaded, and caused to be impleaded one *G. B.* in the court of the said late king, before the king himself, (the said court being then at *Westminster*, in the said county of *Middlesex*;) in a plea of debt for two thousand pounds, as forfeited by the said *G. B.* for an offence pretended to have been committed by him against a certain penal statute in the parliament of the lady *Elizabeth*, * late queen of *England*, at a session thereof holden at *Westminster* in the thirty-first year of her reign, intituled, "*An act against abuses in election of scholars and presentation to benefices*," by reason of a pretended corrupt resignation of a certain benefice with the cure of souls, to wit, the church of *G.* in the county of *S.* pretended to have been made by the said *G. B.* alledged to have been the incumbent of the said benefice with the cure of souls. And the said coroner and attorney of our said present lord the king, for our said present lord the king, gives the court here further to understand and be informed, that afterwards, and whilst the said last-mentioned suit was depending in the said court of the said late king, before the said late king himself, that is to say, on the sixth day of *July*, in the thirty-first year of the reign of the said late king, at *Westminster* aforesaid, in the county of *Middlesex*, he the said *J. H.* did unlawfully compound and agree with the said *G. B.* so surmised to have offended against the penal statute above particularly mentioned, for the said offence, pretended to have been committed by him as aforesaid, without the order or consent of the said court of the said late king, before the said late king himself, in which said court the said suit was then depending, and without any lawful authority whatsoever, in contempt of the said late lord the king and his laws, to the great obstruction of justice, to the evil and pernicious example of all others in the like case offending, against the peace of the said late lord the king, his crown and dignity, and also against the form of the statute in such case made and provided: whereupon the said coroner and attorney of our said present sovereign lord the king, for our said present lord the king, prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him the said *J. H.* in this behalf, to make him answer to our said * present sovereign lord the king, touching and concerning the premises aforesaid, &c. ^a

Impleaded, &c.

[* 236]

That whilst the suit was depending,

J. H. compounded, &c.

in contempt, &c.

whereupon the coroner prays, &c.

[* 237]

By stat. 18 *Eliz.* ch. 5, *No (common) informer shall compound or agree with the defendant, but after answer made in court, nor after answer but by the order or consent of the court, on pain of being set on the pillory in some market-town next adjoining, in open market, for two hours, and of being disabled to be informer on any penal statute, and also of forfeiting 10l. half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information. And the justices of oyer and terminer, of assize, and of the peace in sessions, may hear and determine all offences against this act.*

a Information *qui tam* by a common informer in the court of *King's Bench* against a clergyman for buying goods to sell again for lucre, *Cro. Cir. Aff.* 500.

Information *qui tam* at the sessions, under title *Information, post.*

C O N-

PRECEDENTS of INDICTMENTS.

C O N S P I R A C Y.

Indictment against two persons, for conspiring that one of them should rob the other, with intent to charge the hundred.

First count, stating an information of the robbery, before a justice, averring its falsity.

[* 238]

Information to a justice.

[* 239]
With intent,
&c.

Averments.

Warwickshire. **T**HE jurors for our lord the king upon their oath present, That *J. B.* late of the parish of *W.* in the county of *Warwick*, labourer, and *R. B.* late of the same, labourer, being evil-disposed persons, and devising and intending unjustly to oppress and aggrieve divers liege subjects of our said lord the king within this realm, and wrongfully to charge them with the payment * of great sums of money, to the amount of two hundred and thirty pounds, and upwards, on the first day of *July*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the said county of *Warwick*, did unlawfully conspire, combine, confederate, and agree together, that he the said *J. B.* should, in or near the king's highway there, take from the person of the said *R. B.* the sum of two hundred and thirty pounds and a silver watch, and that the said *R. B.* should make oath, before some justice of the peace of the said pretended robbery; and the said *R. B.* in pursuance of the said conspiracy, combination, confederacy, and agreement, did afterwards, to wit, on the same day and year above mentioned, at the parish aforesaid, in the county aforesaid, personally appear before *J. D.* esq. then and yet being one of the justices of our said lord the king in and for the said county of *Warwick*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed within the same county, and did make and give information in writing, upon oath, to and before the said *J. D.* then and there being such justice as aforesaid, That about ten of the clock in the forenoon of that day, he was assaulted, in the highway leading from *C.* in the county of *Warwick*, to *L.* in the county of *Stafford*, near a place called the *Green Man*, in the parish of *W.* in the hundred of *H.* in the said county of *Warwick*, by a tall, lusty man, wearing a dark brown wig and a brown coat, mounted on a black horse or mare, about fifteen hands high, and was by him robbed, in the highway aforesaid, of the sum of two hundred and thirty pounds and a silver watch, and that he did not, at the time of the said robbery, nor then, know the person who * committed the said fact, with the fraudulent and wicked intent and on purpose to charge the inhabitants of the said hundred with the payment of the said sum of two hundred and thirty pounds, under colour of justice and process of law; whereas in truth and in fact he the said *R. B.* was not assaulted in the highway leading from *C.* aforesaid, in the county of *Warwick* aforesaid, to *L.* in the said county of *Stafford*, near the said place called the *Green Man*, in the said parish of *W.* in the hundred of *H.* in the said county of *W.* by a tall, lusty man, wearing a dark brown wig and a brown coat, mounted on a black horse or mare; and whereas in truth and in fact he the said *R. B.* was not at the time in that behalf aforesaid, or at any other time whatsoever, robbed of the sum of two hundred and thirty pounds and a silver watch, as he the said *R. B.* so swore in and by his said information in writing as aforesaid, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath

C O N S P I R A C Y.

oath aforesaid, do further present, That the said *J. B.* and *R. B.* being such evil-disposed persons as aforesaid, and devising and intending unjustly to oppress and aggrieve divers subjects of our said lord the king within this realm, and wrongfully to charge them with the payment of great sums of money, to the amount of two hundred and thirty pounds, and upwards, on the said first day of *July*, in the year aforesaid, with force and arms, at the parish of *W.* aforesaid, in the county of *Warwick* aforesaid, did unlawfully and wickedly conspire, combine, confederate and agree together, that he the said *J. B.* should, in or near the king's highway there, take from the person of the said *R. B.* the sum of two hundred and thirty pounds and a silver watch, and the said *J. B.* * in pursuance of the said last-mentioned conspiracy, combination, confederacy, and agreement, afterwards, to wit, on the same day and year aforesaid, at the parish of *W.* aforesaid, in the hundred of *H.* in the said county of *Warwick*, did take from the person of the said *R. B.* the sum of two hundred and thirty pounds and a silver watch, with the fraudulent and wicked intent and on purpose to charge the inhabitants of the said hundred with the payment of the said last-mentioned sum of two hundred and thirty pounds, and the value of the said last-mentioned watch, by process of law, (a) under colour and pretence that he the said *R. B.* had been robbed of the same by some person to him the said *R. B.* unknown, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Second count,
omitting the
information
and averments.

[* 240]

(a) *Vide 3 Bac. Abr. 61. 2*
Burn's Just. title Hue and Cry.

Indictment for conspiring to charge a man with a rape, and preferring an indictment against him for the same, (bill not found) with an intent to obtain money from him.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. P.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, labourer, *E.* his wife, and *J. H.* late of the same, labourer, being evil-disposed persons, and wickedly devising and intending unjustly to deprive one *H. S.* of his good name, fame, credit, and reputation, and also to subject the said *H. S.* without any just cause, to the loss of his life and forfeiture of his goods, on the twentieth day of *May*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, * &c. with force and arms, at the parish aforesaid, in the county aforesaid, among themselves did unlawfully and wickedly conspire, combine, confederate, and agree falsely to charge and accuse the said *H. S.* that he the said *H.* had then lately before feloniously ravished and carnally known the said *E.* against her will and consent. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. P.* *E.* his wife, and *J. H.* afterwards, to wit, on the said twentieth day of *May*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, falsely, unlawfully, and for wicked gain sake, in the presence and hearing of divers persons, did charge and accuse the said *H. S.* that he the said *H. S.* had then lately before feloniously ravished and carnally known the said *E.* And the jurors aforesaid, upon their oath aforesaid, do further present, That in

[* 241]

a See the note at the end of the doctrine under this head.

further

PRECEDENTS of INDICTMENTS.

Oath before a Justice.

[* 242]

Caption of the session at Clerkenwell-green.

Bill exhibited.

All the jurors names.

Where the bill should be recited.

[* 243]

further prosecution of the said wicked devices and intentions of them the said *J. P. E.* his wife, and *J. H.* and according to the conspiracy, combination, and agreement between them as aforesaid had, the said *E.* afterwards, to wit, on the said twentieth day of *May*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did upon her oath falsely charge and accuse the said *H. S.* before *T. D.* esq. then and yet being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of *Middlesex* aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, that he the said *H. S.* then lately before had carnal knowledge of the body of her the said *E.* against her consent. And the jurors aforesaid, upon their oath aforesaid, do further present, That in further prosecution of the said wicked devices * and intentions of them the said *J. P. E.* his wife, and *J. H.* and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, the said *E.* by the name of *E.* the wife of *J. P.* afterwards, to wit, at the general quarter session of the peace of our said lord the king, holden at the *New Sessions-house* on *Clerkenwell-green*, in and for the county of *Middlesex* aforesaid, on *Monday* the fourth day of *July*, in the year aforesaid, before *W. M.* esq. Sir *S. S.* knight, *J. S.* and *W. H.* esqrs. and other their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of *Middlesex* aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, did falsely exhibit a certain bill, commonly called a bill of indictment, against the said *H. S.* by the name and addition of *H. S.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, yeoman, to *J. S.* gent. [name all the grand jurymen to whom the bill was exhibited,] good and lawful men of the said county of *Middlesex*, then and there sworn, and charged to inquire for our said lord the king, for the body of the said county, which said bill of indictment was, by the said jurors above named, then and there returned in the court aforesaid, before the said justices of our said lord the king above named, and others their fellows aforesaid, thus indorsed (*not found*), which said bill follows in these words, to wit [*recite the bill exhibited verbatim*], with intent to obtain and acquire unjustly to them the said *J. P. E.* his wife, and *J. H.* of and from the said *H. S.* divers sums of money for compounding the said pretended felony and rape, so falsely charged on him as aforesaid, to the great damage, infamy, and disgrace of the said *H. S.* to the evil * and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a

Indictment for conspiring to charge a man with receiving stolen goods, and thereby obtaining money for compounding the same, and causing him to lay out a sum of money for the entertainment of the conspirators at one of their houses.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *W. G.* late of the parish of *St. Sepulchre*, in the county of *Middlesex*, gent. and *W. B.* late of the

^a It seems not necessary to aver that *H. S.* was innocent; for it is alledged that he was *falsely* charged and prosecuted, and innocence is to be intended until the contrary appears. *Regina v. Best & al'. Trin. 3 Ann. B. R. Salk. 174.* same,

CONSPIRACY.

same, coffee-man, being evil-disposed persons, and wickedly devising and intending one *A. L.* not only of his credit and good reputation unjustly to deprive, but also to obtain and acquire to themselves of and from the said *A. L.* divers large sums of money, on the twentieth day of *August*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, did amongst themselves conspire, combine, confederate, and agree falsely to charge and accuse the said *A. L.* that he the said *A. L.* had then lately before received stolen goods. And the jurors aforesaid, on their oath aforesaid, do further present, That the said *W. G.* and *W. B.* afterwards, to wit, on the said twentieth day of *August*, in the year aforesaid, according to the said conspiracy, combination, confederacy, and agreement between themselves before had as aforesaid, falsely, * wickedly, and for the sake of unjust lucre and gain, did, in the presence and hearing of divers persons, charge and accuse him the said *A. L.* that he the said *A. L.* had bought hats that were stolen, and that they the said *W. G.* and *W. B.* did then and there falsely pretend and affirm to the said *A. L.* that a bill of indictment was then found, at the general session of the peace, holden at the *New Sessions-house* on *Clerkenwell-green*, in and for the said county of *Middlesex*, on the eighteenth day of *August* then last, against the said *A. L.* for receiving stolen goods; whereas in truth and in fact there was not at the time of such charge and accusation, nor at any time before or since, any bill or bills of indictment whatsoever in any manner found against the said *A. L.* for the said supposed offence, so falsely charged on him, or for any such like crime; and whereas in truth and in fact the said *A. L.* was never guilty of the said supposed offence, or any other offence of that kind. And the jurors aforesaid, upon their oath aforesaid, do further present, That by the said false accusations, and by divers threats, menaces, and allegations of them the said *W. G.* and *W. B.* that he the said *A. L.* should be transported into parts beyond the seas for the said pretended offence, they the said *W. G.* and *W. B.* did afterwards, to wit, on the said twentieth day of *August*, in the year aforesaid, demand, receive, and take of the said *A. L.* one piece of gold coin, of the proper coin of this realm, called a guinea, for and as a composition and agreement of the said pretended offence, and to discharge the said *A. L.* from all further prosecution for the same; and they the said *W. G.* and *W. B.* did also then and there, by the false and wicked pretences aforesaid, unlawfully cause and procure the said *A. L.* to expend and lay out, and the said *A. L.* did expend and lay out, twenty-three shillings, of * lawful money of *Great-Britain*, at the dwelling-house of the said *W. B.* in wine and other liquors, in the company and for the entertainment of them the said *W. G.* and *W. B.* to the great damage, infamy, and disgrace of the said *A. L.* to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

[* 244]
Charge.

Averments.

Money received
as a composition.

Money expended.

[* 245]

Indictment for a conspiracy to charge a man with committing sodomy with one of the conspirators, and thereby obtaining money, under pretence of concealing the same, and desisting from all prosecutions.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *H. P.* late of the parish of *St. James*, *Clerkenwell*, in the county of *Middlesex*, labourer, *C. W.* late of the same, First count, stating a conspiracy, and the receipt of money, under colour, &c.

PRECEDENTS of INDICTMENTS.

[* 246]

Averment.

Money acquired
from the profes-
sor.

Second count,
omitting the
conspiracy.

Did threaten,
&c.

Averment.

[* 247]

Money acquir-
ed.

same, labourer, and *S. T.* late of the same, widow, being evil-disposed persons, and contriving and intending one *G. G.* not only of his good name, fame, credit, and reputation wholly to deprive, but also to obtain and get to themselves of and from the said *G. G.* divers sums of money, on the first day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the said parish of *St. James, Clerkenwell*, in the said county of *Middlesex*, among themselves did conspire, combine, confederate, and agree falsely to charge and accuse the said *G.* that he the said *G.* then lately before had committed the crime of sodomy, commonly called buggery, with him the said *H. P.* And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *H. P. C. W.* and *S. T.* afterwards, to wit, on the said first day of *May*, in the * year aforesaid, at the parish aforesaid, in the county aforesaid, according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, falsely, unlawfully, and wickedly did charge and accuse the said *G. G.* that he the said *G.* then lately before had committed the crime of sodomy, commonly called buggery, with him the said *H. P.* whereas in truth and in fact the said *G. G.* was never guilty of the said crime, or of any crime of the like nature; and that they the said *H. P. C. W.* and *S. T.* in pursuance of and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, afterwards, to wit, on the said first day of *May*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, wickedly, and unjustly did obtain, acquire, and get into their hands and possession the sum of five pounds, of lawful money of *Great-Britain*, of the monies of the said *G. G.* of and from the said *G.* under the aforesaid false colour and pretence of concealing the said supposed crime, and for not prosecuting the said *G. G.* for the same, to the great damage of the said *G. G.* to the evil and pernicious example of all others in the like case offending; and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *H. P. C. W.* and *S. T.* on the first day of *May*, in the twenty-first year aforesaid, with force and arms, at the parish aforesaid, in the said county of *Middlesex*, wickedly, unlawfully, and for lucre and gain sake, did threaten the said *G. G.* that unless he the said *G. G.* would give them the said *H. P. C. W.* and *S. T.* five pounds, they the said *H. P. C. W.* and *S. T.* would swear sodomy (meaning the detestable crime of sodomy called buggery) against him the said *G. G.* whereas in truth and in fact the said *G. G.* was * never guilty of the crime of sodomy, or of any such crime; and the said *H. P. C. W.* and *S. T.* afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, by means of the threatening aforesaid, unlawfully, wickedly, and injuriously did obtain, acquire, and get to themselves of and from the said *G. G.* five pounds, of lawful money of *Great-Britain*, of the monies of the said *G. G.* to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a

^a Vide *Rex v. Ripstall*, 3 Burr. 1320, and the indictment in *Cro. Cir. Aff.* 216. Vide also 30 Geo. II. ch. 24, § 1.

CONSPIRACY.

Indictment for conspiring to charge a man with robbery, and preferring a bill against him before the grand jury, which was returned ignominiously.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A.* the wife of *J. C.* late of the parish of *St. Sepulchre*, in the county of *Middlesex*, yeoman, *R. W.* late of the same, yeoman, and *T. N.* late of the same, yeoman, being evil-disposed persons, and wickedly devising and intending unjustly to deprive one *J. S.* of his good name, fame, credit, and reputation, and also to subject the said *J. S.* without any just cause, to the loss of his life and forfeiture of his goods, on the eighth day of *December*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, among themselves did unlawfully and wickedly conspire, combine, confederate, and agree * falsely to charge and accuse the said *J. S.* that he the said *J. S.* had then lately before feloniously stolen divers goods, chattels, and monies of the said *J. C.* from the person and against the will of the said *A. C.* And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *A. C. R. W.* and *T. N.* afterwards, to wit, on the said eighth day of *December*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, falsely, unlawfully, and maliciously, in the presence and hearing of divers persons, did accuse the said *J. S.* that he the said *J. S.* had then lately before stolen divers goods, chattels, and monies of the said *J. C.* from the person and against the will of the said *A. C.* to the great damage of the said *J. S.* And the jurors aforesaid, upon their oath aforesaid, do further present, That in further prosecution of the said wicked devices and intentions of them the said *A. C. R. W.* and *T. N.* and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, they the said *A. C. R. W.* and *T. N.* afterwards, to wit, at the general session of the peace of our said lord the king, holden at the *New Sessions-house* on *Clerkenwell-green*, in and for the county aforesaid, on the said eighth day of *December*, in the year aforesaid, before *W. M. J. S. W. H. D. W.* esqrs. and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, did exhibit a certain bill, commonly called a bill of indictment, against the said *J. S.* by the name and addition of *J. S.* late of the parish of *St. Giles* in the *Fields*, in the county of *Middlesex*, vintner, to *E. W.* * (name all the grand jury), good and lawful men of the said county, then and there sworn, and charged to enquire for our said lord the king, for the body of the said county; which said bill of indictment was by the same jurors above named then and there returned in the court, before the justices of our said lord the king above named, and others their fellows aforesaid, thus indorsed, [bill not found], which said bill follows in these words, to wit; *Middlesex.* The jurors for our lord the king upon their oath present, (set forth the indictment exhibited verbatim). By means of which said false accusation and prosecution against him the *J. S.* in manner and form aforesaid, he the said *J. S.* was greatly defamed and disgraced, and put to great expence of his money, to the great damage and

[* 248]

Did accuse, &c.

Caption of the session at Clerk-
enwell-green.

Did exhibit, &c.

Names of the grand jury.

[* 249]

Indictment.

By means, &c.

and disgrace of the said J. S. to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.^a

Indictment at common law, for a conspiracy among workmen to raise their wages, and lessen the time of labour.

[* 250]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, labourer, *C. D.* late of the same, labourer, and *W. S.* late of the same, labourer, on the fifth day of *October*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. being workmen and journeymen in the art, mystery, and manual occupation of a wheelwright, and not * being content to work and labour in that art and mystery by the usual number of hours in each day, and at the usual rates and prices, for which they and other workmen and journeymen were wont and accustomed to work, but falsely and fraudulently conspiring and combining unjustly and oppressively to increase and augment the wages of themselves, and other workmen and journeymen in the said art, and unjustly to exact and extort great sums of money for their labour and hire in their said art, mystery, and manual occupation from their masters who employ them therein, with force and arms, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, together with divers other workmen and journeymen in the same art, mystery, and manual occupation (whose names to the jurors aforesaid are as yet unknown) unlawfully did assemble and meet together, and so being assembled and met, did then and there unjustly and corruptly conspire, combine, confederate, and agree among themselves, that none of the said conspirators, after the same fifth day of *October*, would work at any lower or lesser rate than five shillings for the hewing of every hundred of spokes for wheels, and eight shillings for making of every pair of hinder wheels, for or on account of any master or employer whatsoever in the said art, mystery, and occupation; and also that none of them the said conspirators would work day-work or labour any longer than from the hour of six in the morning till the hour of seven in the evening in each day from thenceforth, to the great damage and oppression not only of their masters employing them in the said art, mystery, and occupation, but also of divers others in the like case offending, and against the peace * of our said lord the king, his crown and dignity.^b

[* 251]

By stat. 2 & 3 Edw. VI. ch. 15, § 1, *If any artificers, workmen, or labourers do conspire, covenant, or promise together, or make any oaths, that they shall not make or do their works but at a certain price or rate, or shall not enterprize, or take upon them to finish that another hath begun, or shall do but a certain work in a day, or shall not work but at certain hours and times, that then every person so conspiring,*

^a See the references in the bottom note, *ante*, 247.

^b An indictment may be drawn from this form on the statute, by pursuing the words of it, and concluding, "contrary to the form of the statute in such case made and provided."

Indictment against several journeymen serge-weavers for refusing to work for a master who had employed a man, contrary to certain rules entered into by conspiracy. *Cro. Cir. Ass.* 204.

See *The King* against *The Journeymen Taylors of Cambridge*, 8 Mod. Rep. 10.

C O N S P I R A C Y.

covenanting, swearing, or offending, being lawfully convicted thereof, by witness, confession, or otherwise, shall forfeit for the first offence ten pounds to the king's highness, and if he have sufficient to pay the same, and do also pay the same within six days next after his conviction, or else shall suffer for the same offence twenty days imprisonment, and shall have only bread and water for his sustenance; and for the second offence shall forfeit twenty pounds to the king, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction, or else shall suffer for the second offence punishment of the pillory, and for the third offence shall forfeit forty pounds to the king, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction, or else shall sit on the pillory, and lose one of his ears, and also shall at all times after that be taken as a man infamous, and his sayings, * depositions, or oath, not to be credited at any time, [* 252]

§ 3. Justices of assize, justices of peace, mayors, bailiffs, and stewards of leets, at all and every their sessions, leets, and courts, shall have full power and authority to enquire, hear, and determine all and singular offences committed against this statute, and to punish, or cause to be punished, the offender, according to the tenor of the statute.

Indictment for a conspiracy, and defrauding a person of fifty pounds, under pretence of procuring his son the office and place of deputy comptroller of the customs, in the port of Milford.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *W. H.* late of the parish of *St. Martin* in the *Fields*, in the county of *Middlesex*, esq. *W. N.* late of the same, mariner, and *T. J.* late of the same, yeoman, being evil-disposed persons, and wickedly and unjustly devising and intending to defraud one *J. W.* of his monies, on the sixth day of *August*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish of *St. Martin* in the *Fields*, in the county of *Middlesex* aforesaid, falsely, fraudulently, and unlawfully did conspire, combine, confederate, and agree among themselves to obtain, acquire, and get into their hands and possession of and from *B.* the wife of the said *J. W.* a great sum of money of him the said *J. W.* under a false colour and pretence of procuring for *G. W.* the son of the said *J. W.* and *B. W.* the office and place of deputy of the said *W. H.* as comptroller of his majesty's customs in * his port of *Milford*, and the members and creeks thereunto belonging. And the said *W. H.* in pursuance of and according to the said conspiracy, combination, confederacy, and agreement between him and the said *W. N.* and *T. J.* so as aforesaid before had, afterwards, to wit, on the said sixth day of *August*, in the year aforesaid, falsely, fraudulently, unlawfully, and deceitfully did pretend to the said *B. W.* that he the said *W. H.* then had, as comptroller of his majesty's customs in the port of *Milford* aforesaid, and the members and creeks thereunto belonging, power and authority then and there to appoint the said *G. W.* to be his deputy, and that he the said *T. J.* in pursuance of and according to the said conspiracy, combination, confederacy, and agreement between him and the said *W. H.* and *W. N.* so as aforesaid before had, did then and there fraudulently pretend and affirm to the said *B. W.* that he the said *T. J.* had power and authority

K

authority

[* 253]

PRECEDENTS of INDICTMENTS.

[* 254]
Money acquir-
ed.

Averment.

authority on behalf of the said *W. H.* to dispose of the said office and place of deputy to the said *J. W.* for the said *G. W.* his son, and that the said *T. J.* and *W. N.* in pursuance of and according to the said conspiracy, combination, confederacy, and agreement between them and the said *W. H.* so as aforesaid had, afterwards, to wit, on the said sixth day of *August*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, by the false pretences aforesaid, and also by colour and pretence of a certain deputation, purporting to be under the hand and seal of the said *W. H.* and purporting that the said *W. H.* had thereby deputed and impowered the said *G. W.* to act and officiate for him the said *W. H.* as his deputy in the office, business, and employment of a comptroller of the customs at *Aberdovy*, a member or creek belonging to the chief port of *Milford*, aforesaid, fraudulently and unlawfully did obtain, acquire, and get into their hands and * possession, the sum of fifty pounds, of lawful money of *Great-Britain*, of the monies of the said *J. W.* of and from the said *B. W.* that is to say, the said *T. J.* the sum of fifteen pounds, and the said *W. N.* the sum of thirty-five pounds; whereas in truth and in fact the said *W. H.* had not then any power or authority to appoint the said *G. W.* to be his deputy, or in any wise to depute and empower him the said *G. W.* to act and officiate for him the said *W. H.* as his deputy in the office, business, and employment of a comptroller of the customs at *Aberdovy* aforesaid: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *W. H. W. N.* and *T. J.* according to the conspiracy, combination, and agreement between them as aforesaid before had, them the aforesaid *J. W.* and *B.* his wife, of the said sum of fifty pounds, in manner and form aforesaid, fraudulently and unlawfully did deceive and defraud, to the great damage of the said *J. W.* to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.²

Conspiracy and champerty defined.

33 *Edw. I.*
stat. 2.

[* 255]

AS to those who may be said to be guilty of conspiracy, there can be no better rule than the statute of 33 *Edw. I.* the intent whereof was to make a final definition of conspirators: to which purpose it declares, "That conspirators be they that do * confederate or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously, to indite or cause to indite, or falsely to move or maintain pleas; and also such as cause children within age to appeal men of felony, whereby they are imprisoned and sore grieved; and such as retain men in the country with liveries or fees for to maintain their malicious enterprizes: and this extendeth as well to the takers as to the givers, and stewards and bailiffs of great lords, which by their feigniority, office, or power, undertake to maintain their quarrels, pleas, or debates that concern other parties than such as touch the estate of their lords or themselves.

CHAMPERTORS be they that move pleas and suits, and sue them at their proper costs to have part of the land or gain in variance."

¹ Indictment for conspiring to extort money from a person, under pretence of procuring him a place in the Custom-house, *Cro. Cir. Aff.* 198.—Against several persons for conspiring to influence the prosecutor not to sell stock, but to buy more at an improper time, by false informations relative to a peace between *England* and *France*, *ibid.* 206.

C O N S P I R A C Y.

Vide also 1 Haw. 189. [See of other conspirators, stat. 2 & 3 Edw. VI. ch. 15, touching victuallers and labourers, &c.]

1. From the above definition of conspirators it seems clearly to follow, that not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment, whereupon he is lawfully acquitted, are properly conspirators, but that those also are guilty of this offence who barely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such conspiracy or not. 1 Haw. 189.

2. By the common law there can be no doubt but that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal; as where divers persons confederate together by indirect means to impoverish a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in any matter, whether it be true or false. 1 Haw. 190.

3. Also it plainly appears from the words of the statute, that one person alone cannot be guilty of * conspiracy within the purport of it; from whence it follows, that if all the defendants who are prosecuted for such a conspiracy be acquitted but one, the acquittal of the rest is the acquittal of that one also; * and upon the same ground it hath been holden, that no such prosecution is maintainable against a husband and wife only, because they are esteemed but as one person in law, and are presumed to have but one will. 1 Haw. 192, § 8.

4. He who is convicted at the suit of the king of a conspiracy to accuse another of a matter which may touch his life, shall have judgment that he lose the freedom and franchise of the law (whereby he is disabled to be put upon any jury, to be sworn as a witness, or even to appear in person in any of the king's courts;) and also that his houses, lands, and goods shall be seized into the king's hands, and his houses and lands stripped and wasted, his trees rooted up, and his body imprisoned.

This is commonly called a villainous judgment, and is given by the common law, and not by any statute, and is said generally, in some books, to be the proper * judgment upon every conviction of conspiracy at the suit of the king, without any restriction to such as endanger the life of the party; but this point is no where found to be settled. 1 Haw. 193.

5. But this judgment hath been but seldom given, there being no instance of it since the reign of Edward the third. 2 Burr. 996, 997, 2 Inst. 383, 384.

The usual method that is taken at this time to punish the party is by pillory, fine and imprisonment, and till they find sufficient sureties for their good behaviour for a certain term. 2 Burr. 1027.

* *Vide* *Rex v. Rispall*, 3 Burr. 1320, where R. B. and D. were jointly indicted for a conspiracy; the first of whom did not come in to plead: upon which B. and L. were tried together. B. was acquitted, and D. found guilty. R. afterwards appeared and pleaded, who was likewise found guilty: but according to the above passage in *Hawkins*, it seems that no judgment could have been given against D. without the conviction of R. *Vide* p. 629, *post*. For a full explanation of the law on this subject, as well as that relating to rioters, where some are acquitted, or others have died, &c. *vide* *Rex v. Nicols*, 2 Stra. 1227. *Rex v. Kinnersley and Moore*, 1 Stra. 195. *Rex v. Scott and Hams*, 3 Burr. 1262.

As to an action, there is a difference where it is brought against two persons for a conspiracy, and where it is brought specially upon the case for a wrong done by two persons. In the first, if one be found not guilty, the judgment must be arrested; but not so if one be found not guilty in the latter. *Subley v. Mott and another*, 1 Will. 210.

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P R E C E D E N T S of I N D I C T M E N T S.

Note. As the following case contains much information, it is deemed necessary to state it here at large.

Charge of be-
ing the father,
&c.

Averment of
innocence.

Conspiracy the
gist, &c.

[* 258]
Venue.

Proof of con-
spiring.

Testimony of a
conspirator.

*Regina, v. Best & al', Trin. 3 Ann. B. R. Salk. 174.—Indictment was, That the defendants, intending to oppress and defame H. did falsely and maliciously contrive, conspire, meet, and agree falsely to charge the said H. to be the father of a bastard child, of which such a woman went big, and in pursuance thereof did falsely affirm to be the father. Upon demurrer it was urged, that H. might be the father, because it was not averred that he was not the father. It was agreed by the court, 1st, That the several people may lawfully meet and consult to prosecute a guilty person; otherwise, if to charge one that is innocent, right or wrong; for that is indictable. That so it is here, that the conspiracy is the gist of the indictment, and that though nothing be done in prosecution of it, it is a complete and consummate offence of itself; and whether the conspiracy be to charge a temporal or ecclesiastical offence on an innocent person, it is the same thing. 2dly, It need not be averred that H. is innocent; for it is said, that the defendant did falsely affirm him to be the father; and innocence is to be intended till the * contrary appears. Vide 2 West's Prec. pl. 102. 42 Edw. III. 15. The venue must be where the conspiracy was, not where the result of the conspiracy is put in execution; and confederacies are one of the articles in the commission of oyer and terminer to be enquired of. Vide 1 L. Raym. 378, 379.*

On an information for conspiracy, the fact of conspiring need not be proved, but may be collected from other circumstances. The King against Parsons and others, 1 Black. Rep. 392. Vide Rex v. Eccles, Cro. Cir. Ass. 189.

Several instances where an information will be granted for this offence, 3 Bac. Abr. 166.

A person convicted on an indictment of conspiracy cannot be a witness. Priddle's case, Le. Cr. Ca. 382. But if he be pardoned, it seems he may 1 H. H. 306; 2 H. H. 278; Hob. 67, 81. Vide 2 Haw. (6th edit. 558, 610; 2 Wils. 18.

C O N S T A B L E.

1. Indictment against a constable for not presenting the inhabitants of a parish for not repairing a highway.

Oxfordshire. **T**HE jurors for our lord the king upon their oath present, That C. R. late of the liberty of Eye and Dunsdon, in the county of Oxford, yeoman, on the first day of July, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. and long before, being constable of the liberty aforesaid, in the county aforesaid, and then well knowing a certain part of the king's common and ancient highway, called *Stretton Lane*, used for all the subjects of our said lord the king, * and his ancestors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour at their will, and lying within the liberty aforesaid, containing in length twenty yards, and in breadth eight yards, then and long before to have been very ruinous, miry, deep, broken, and in such decay, for want of due reparation and amendment of the same, that the liege subjects of our said lord the king, by, through, and along the same way, with their horses, coaches, carts, and carriages, had not been able, nor then were able, to go, return, pass, ride, and labour, without

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C O N S T A B L E.

without great danger of their lives, and the loss of their goods : nevertheless, the said *C. R.* afterwards, to wit, on the said first day of *July*, in the year aforesaid, at *Oxford*, in the county aforesaid, at the assizes and general session of oyer and terminer, then and there holden for the county aforesaid, before certain justices of our said lord the king duly assigned to hold the same, unlawfully and contemptuously did neglect to make and return a presentment against the inhabitants of the liberty aforesaid, in the county aforesaid, for not repairing and amending the said king's common and ancient highway, as he the said *C. R.* ought to have done, and of right did belong to him to do, to the great hindrance of justice, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

2. *Indictment for refusing to watch with the constable when duly summoned.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *Z. Y.* late of yeoman, on the third day of *August*, in the twenty-second year of the reign of our sovereign * lord *George* the third, king of *Great Britain*, &c. and long before, was an inhabitant in the parish aforesaid, in the county aforesaid, and that the said *Z. Y.* then and there was duly summoned and required to watch in the night of the same day with *E. S.* then one of the constables of the same parish, in the county aforesaid : nevertheless, the said *Z. Y.* his duty in that behalf wholly neglecting, then, to wit, in the night of the same day, or in any part of the same night, did not watch with the said constable, in the parish aforesaid, in the county aforesaid, but to do his duty in that behalf then and there totally did neglect, and wilfully, obstinately, and contemptuously, then and there did make default, in contempt of our said lord the king and his laws, and against the peace of our said lord the king, his crown and dignity.

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It seems, that if a man, who is compellable to watch, shall contemptuously refuse upon request of the constable, the constable may present him at the assizes, or session of the peace, for his default ; which presentment is to be drawn into form, as above, and returned by the grand inquest into court. Dalt. 353. ^a

3. *Indictment for a contempt by a headborough in refusing to convey a person to Bridewell, committed by a justice of the peace.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That on the third day of *August*, in the twenty first year of the reign of our sovereign lord *George* the third, * king of *Great-Britain*, &c. one *J. P.* at the parish of *St. George* in the *East*, in the county of *Middlesex*, was brought by one *I. W.* then being one of the headboroughs of the same parish, before *J. S.* esq. then and yet one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, and the said *J. P.* then and there was charged, upon the oath of one *S. B.* before the said justice, for violently assaulting her, in breach

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^a Touching the duty of watchmen in general, *vide* Dalt (edit. 1727) ch. 104.

Warrant.

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of his majesty's peace; which said *J. P.* then and there was examined before the said *J. S.* the justice aforesaid, concerning the said offence, so as above charged upon him; upon which, and for that the said *J. P.* then could not find sureties before the same justice for his personal appearance at the then next general quarter session of the peace, to be holden for the county aforesaid, to answer of and concerning the premises, he the said *J. S.* being such justice as aforesaid, at the parish aforesaid, in the county aforesaid, in due form of law, did make a certain warrant ^a under his hand and seal, bearing date on the said third day of *August*, in the year aforesaid, directed [*as the direction may be*] to the keeper of *Bridewell*, (the same being a certain gaol and prison of our said lord the king), situate and being at, &c. [*as the place may be*], commanding the said keeper that he should receive into his custody the body of the said *J. P.* charged upon the oath of the said *S. B.* with the premises above specified, and for want of sureties; and the said justice, by his warrant aforesaid, did command the said keeper the said *J. P.* safely to keep, until he * the said *J. P.* by due course of law, from thence should be discharged; which same warrant afterwards, to wit, on the said third day of *August*, in the twenty-first year aforesaid, at the parish aforesaid, in the county aforesaid, was delivered to the said *L. W.* then being one of the headboroughs of the same parish, and then and there having the said *J. P.* in his custody, for the aforesaid cause; and the said *I. W.* then and there was required and commanded, by the said *J. S.* the aforesaid justice, immediately to convey the said *J. P.* to the said *Bridewell*, and to deliver the said *J. P.* to the keeper thereof, together with the aforesaid warrant. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *I. W.* late of the parish aforesaid, in the county aforesaid, yeoman, afterwards, to wit, on the said third day of *August*, in the year aforesaid, then as aforesaid being one of the headboroughs of the same parish, and then having the said *J. P.* in his custody for the cause aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully and contemptuously did neglect and refuse to convey the said *J. P.* to the said *Bridewell*, being such gaol and prison as aforesaid, together with the said warrant, as he the said *I. W.* by virtue of his said office, according to law, should and ought to have done, to the great hindrance of justice, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^b

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*4. *Indictment for a contempt by a high constable, in disobeying an order of sessions, for producing an account of all monies by him received on several county rates.*

Caption of the Session at Clerkenwell-green by adjournment.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That at the general quarter session of the peace of our lord the king, holden for the county of *Middlesex*, at the *New Sessions-house* on *Clerkenwell-green*, in and for the county aforesaid, by adjournment, to wit, on *Saturday* the twentieth day of *July*, in the twenty-second year of the reign of our sovereign lord

^a This should be accurately stated.

^b Indictment against a constable for refusing to assist another constable in securing a person who had offended, &c. contrary to the verbal directions of a justice of the peace. *Cro. Cir. Ass.* 63. See the concluding part of this title.

George

C O N S T A B L E.

George the third, king of *Great-Britain*, &c. before *W M. J. S.* *W H.* and *W A.* esquires, and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, it was ordered, by the same justices and court there, as followeth, to wit, It is ordered by this court, "that the present Justices order.

and late high constables of this county herein after named, to wit, *W. N.* gent. present high constable of the city and liberty of *Westminster*, and *T. J.* gent. late high constable of *Holborn* division; *W. F.* gent. late high constable of *Finsbury* division; *J. P.* gent. present high constable of the *Tower* division; *W. P.* gent. late high constable of the same division; *W. L.* gent. present high constable of *Kensington* division; *J. J.* gent. late high constable of the same division; *J. R.* gent. and *H. M.* gent. present high constables within the hundred of *Edmonton*; *W. N.* gent. and *R. W.* gent. present high constables within the hundred of *Gore*, do personally attend and produce before the court of the next general session of the peace * to be holden for this county, at the *New Sessions-house* on *Clerkenwell-green*, in the said county, by adjournment, on *Tuesday* the twenty-seventh day of *August* next, at three of the clock in the afternoon of the same day, a true and perfect account in writing of all monies by them respectively received during their respective continuance in their office of high constable, or after their or any of their being discharged from the same, for relief of maimed soldiers and mariners, for the *Marshalsea*, *King's Bench*, and hospitals, for the passing and relieving of vagrants, for repair of the publick bridges of this county, and for repair of the house of correction at *Clerkenwell*, in the same county, or for any of the purposes aforesaid, and of their respective payments out of the same, together with the receipts and vouchers of them respectively given for such payments; and also a true account in writing of all such arrears as are yet standing out and unreceived upon the several rates made for raising of monies for any of the purposes aforesaid, from any and what parishes or places within their respective districts; and of the true *Christian* names and surnames of the petty constables, or parish officers, who have made default in not paying the said arrears: and hereof the said present and late high constables are not to fail, as they and every of them will answer the contrary at their peril," as by the said order of

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As by, &c. court more fully appears; of which said order the said *T. J.* one of the high constables in the abovesaid order named, afterwards, to wit, on the nineteenth day of *August*, in the year aforesaid, at the parish of *St. Sepulchre*, in the said county of *Middlesex*, had notice: nevertheless, the said *T. J.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, gent. on the said twenty-seventh day of *August*, in the year aforesaid, (then being high constable of *Holborn* division, as in the order above-mentioned) at the hour of three * in the afternoon of the same day, and throughout that day, at the parish of *St. Sepulchre* aforesaid, in the county aforesaid, unlawfully and contemptuously did neglect and refuse personally to attend and produce before the court of general session of the peace, holden for the county aforesaid, at the *New Sessions-house* aforesaid, on the said *Tuesday* the twenty-seventh day of *August*, in the year aforesaid, a true and perfect account in writing of all monies by him received, during his continuance in his said office of high constable, for relief of maimed soldiers and mariners, for the *Marshalsea*, *King's*

Breach,

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PRECEDENTS of INDICTMENTS.

King's Bench, and hospitals, for the passing and relieving of vagrants, for repair of public bridges of the county aforesaid, and for the repair of the house of correction at *Clerkenwell*, in the same county, or for any of the purposes aforesaid, and of his payments out of the same, together with the receipts and vouchers to him given for such payments; and also a true account in writing of all such arrears as were then standing out and unreceived upon the several rates made for raising of monies for any of the purposes aforesaid, from any and what parishes and places within his division; and of the true *Christian* names and surnames of the petty constables, or parish officers, who have made default in not paying the said arrears, as by the said order he the said *T. J.* was required to do, in contempt of our said lord the king and his laws, to the great hindrance and obstruction of justice, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.^a

[* 266] * 5. *Indictment against a constable for not appointing any watch, and absenting himself from watching.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. Leonard, Shoreditch*, in the county of *Middlesex*, butcher, on the ninth day of *August*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and long before, was, and still is, one of the constables of the parish aforesaid, in the county aforesaid; and that the aforesaid *A. B.* by reason of his office aforesaid, ought to appoint sufficient watch to be kept through the whole night, by men, being inhabitants of the same parish, in convenient places within the parish aforesaid, for the preservation of the peace of our said lord the king, and for the apprehending of malefactors and suspicious persons: nevertheless, the said *A. B.* so being constable, and neglecting his duty in this behalf, in the night of the aforesaid ninth day of *August*, in the year aforesaid, or in any part of the said night, at the parish aforesaid, in the county aforesaid, did not appoint any watch to be kept by men, being inhabitants of the same parish, within the parish aforesaid, but then and there, the whole night aforesaid, from his said office voluntarily and obstinately did absent himself, and contemptuously did make default therein, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.^b

[* 267] * 6. *Indictment for refusing to execute the office of chief constable of a hundred, to which he was elected at a session holden on Clerkenwell-green.*

Caption.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That at the general quarter session of the peace of our said lord the king, holden at the *New Sessions-house* on *Clerkenwell-green*, in and for the county of *Middlesex*, by adjournment, on *Thursday* the ninth day of *October*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. before *W. M. J. S. W. A. D. W.* esquires, and others

^a See the concluding part of this title.

^b *Vide Dalt.* (edit. 1727) ch. 134; 2 *H. H.* 96, 97, 98; 4 *Black. Com.* 289; and the concluding part of this title.

their

C O N S T A B L E.

their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, one *W. B.* late of the parish of *St. Andrew, Holborn*, in the said county of *Middlesex*, turner, then and long before being an inhabitant and residing in the parish aforesaid, within the hundred of *Ossulston*, in the said county of *Middlesex*, and a proper person to execute the office of chief constable within the said hundred, at the same session by the justices above named, in due manner was elected to be one of the chief constables of the hundred aforesaid, in the room and stead of one *J. B.* whereof the said *W. B.* afterwards, to wit, on the fifteenth day of the same month of *October*, in the year aforesaid, at the said parish of *St. Andrew, Holborn*, in the said county of *Middlesex*, had notice: nevertheless, the said *W. B.* his duty in that behalf not regarding, but contriving and intending, as much as in him lay, to prevent and hinder the due execution of justice, from the said fifteenth day of *October*, in the year aforesaid, until the day of the taking of this inquisition,* at the parish aforesaid, within the hundred aforesaid, in the county aforesaid, unlawfully, wilfully, obstinately, and contemptuously did refuse to take upon himself and execute the said office of chief constable within the hundred aforesaid, contrary to his duty in that behalf, in manifest contempt and delay of justice, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a

Elected.

Breach.

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Every justice of the peace may cause two constables to be chosen in each hundred; and this seemeth to be meant of the high constables of hundreds, and to include the swearing of them. Dalt. (edit. 1727) ch. 28. (a)

(a) Vide 2 Haw. 65.

And by stat. 34 Hen. VIII. ch. 26, § 70, *Two justices of the peace, the one being of the quorum, may appoint the high constables in Wales.* Dalt. ch. 28.

The usual manner is, that these high constables of hundreds be chosen either at the quarter sessions of the peace; or, if out of the sessions, then by the greater number of the justices of the peace of that division where they dwell: and likewise that they be sworn, either at the sessions, or by warrant from the sessions; which course hath been allowed and commended by the judges of assize. Ibid. ^b

* 7. *Indictment for refusing to take the oath of petty constable, and to execute that office, to which he had been elected at a vestry.*

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That *R. K.* late of the parish of *St. Giles* in the *Fields*, in the county of *Middlesex*, clock-maker, on the

^a Indictment against a person for refusing to take the oath of constable of the ward of *Farringdon Within*, after being elected at a court of wardmote, according to the custom of the city in that behalf, *Cro. Cir. Aff.* 55. Vide *1 Stra.* 920. *12 Mod.* 115.

The crown may exempt particular persons from serving the office of constable, or any other office under the crown, provided there be a sufficient number of persons left to serve the office. *The King against Clarke*, 1 Term Rep. 686.

^b As to the doctrine relating to constables in general, see the whole of this chapter; 1 *Bac. Abr.* 438 to 443; *Com Dig.* title *Leet* (m. 5.); 1 *Bur. Just.* (15th edit.) 383. See also the next note, &c.

eighth

PRECEDENTS of INDICTMENTS.

eighth day of *October*, in the twenty-first year of the reign of our
 sovereign lord *George* the third, king of *Great-Britain*, &c. and
 long before, was an *inhabitant* and *resiant* within the parish aforesaid,
 and an able person to serve the office of petty constable for the same
 parish, and he the said *R. K.* on the said eighth day of *October*, in
 the year aforesaid, at the vestry-room of and in the parish church of
 the same parish, there situate, lawfully and in due manner was elect-
 ed and chosen by *J. W. A. G. P. D. J. L.* and *H. G.* ancient inha-
 bitants of the same parish, and (a) *usually* present at the election of
 parish officers for the parish aforesaid, into the office of petty con-
 stable for the said parish of *St. Giles* in the *Fields*, in the said county
 of *Middlesex*, for one year from thence next following, to do and
 execute all and singular those things which belong to the office of
 constable; and that the said *R. K.* afterwards, to wit, on the first
 day of *November*, in the year aforesaid, at the parish aforesaid, in
 the county aforesaid, had due notice thereof, and then and there
 was required to appear before *J. M.* esq. then and yet being one of
 the justices of our said lord the king, assigned to keep the peace of
 our said lord the king in and for the county of *Middlesex* aforesaid,
 and also to hear and determine divers felonies, trespasses, and other
 misdeeds committed in the same county, on the same first day of
November, in the year aforesaid, to take * his oath for the due ex-
 ecution of the said office of petty constable for the same parish, ac-
 cording to the duty of that office: nevertheless, the said *R. K.* his
 duty in that behalf not regarding, but contriving and intending
 wholly to neglect to serve the said office of petty constable, after he
 the said *R. K.* was so elected and chosen into the said office as afore-
 said, to wit, on the said first day of *November*, in the year aforesaid,
 and continually afterwards, until the day of taking of this inquisi-
 tion, at the parish aforesaid, in the county aforesaid, unlawfully and
 contemptuously did refuse, and still doth refuse, to take his said oath
 for the due execution of the said office of petty constable, or in any
 wise to execute the same office, to the great hindrance of justice, in
 contempt of our said lord the king and his laws, to the example of
 all others in the like case offending, and against the peace of our
 said lord the king, his crown and dignity.

*Petty constables are assistants to high constables in each town, parish,
 or vill, the chusing of whom properly belongs to the court-leet; but now
 they are elected by the parishioners, and sworn by a justice of the peace,
 &c. who may, on just cause, remove them.*

* By stat. 13 & 14 Car. II. ch. 12, § 15, *If any constable, head-
 borough, or tithingman shall die or go out of the parish, any two (a)*

a It cannot at present be discovered from what authority this was taken.
Sir William Blackstone (a) says they are all chosen by the jury at the leet; or,
 if no court leet be held, are appointed by two justices of the peace. *Vide*
2 Haw. 65. Dalt. (edit. 1727) ch. 1 and 28. 1 Bur. Just. (15th edit.) 390.
Per Holt, without a question a corporation of common right cannot chuse a
 constable: by custom they may; but then they must prescribe for it. *Salk.*
 502.

A good custom within a parish may be pleaded, 3 Burr. 1894: so of a
 town or vill, *Cro. Eliz.* 180; 1 Bac. Abr. 672: so of a city, burgh, hamlet,
 manor, &c. *H. & B. Co. Lit.* 110. Therefore quere if the above indictment
 should not have stated a custom to elect, &c. *Vide Cro. Cir. Aff.* 55.

One who is a *resiant* within a private leet within the hundred is not therefore
 exempt from serving the office of constable of the hundred; and a custom to
 elect such a constable is good. *Rex v. Gange, Cowp.* 13. *Vide 12 Mod.* 115.
2 Stra. 920.

justices

Elected, &c.

(a) *Vide note*
at the end of
this precedent.

Notice.

[* 270]

Breach.

[* 271]

(a) A constable
may be sworn in
before one jus-
tice.

(a) 1 Black.
Com. 356.

C O N S T A B L E.

justices of the peace may make and swear a new constable, &c. until the lord of the manor shall hold a court, or until the next quarter sessions, who shall approve of the said officers, or appoint others; and if any officer shall continue above a year, the quarter sessions may discharge him, and appoint another until the lord shall hold a court. *2 Stra. 1149. Dalt. 85.*

These constables are appointed yearly, and are to be men of honesty, knowledge, and ability; and if they refuse to serve, may be bound over to the sessions, and indicted and fined, or fined in the leet. *Dalt. (edit. 1727) ch. 28.*

All petty constables, within the limits of their several towns, are conservators of the peace at the common law, by virtue of their office; and they may do what they can to keep the peace, but they cannot take surety of the peace at the request of any man; yet ex officio they may cause such as in their presence are about to make an affray to find sureties to keep the peace, and that as well before the affray as after; and they may commit the offenders to the stocks, or some other safe custody (as their quality requires), and afterwards carry them before a magistrate, or to the gaol, until they shall find surety of the peace. *Dalt. (edit. 1727) ch. 1.*

The power of petty constables to commit, &c. *Vide post, 272.*

Where a constable neglects a duty incumbent on him, either by common or statute law, he is for his default indictable: and though he is not named in a statute to execute warrants therein particularly mentioned, yet the justices may command him to execute *them; and if he refuses to obey such commands, or neglects to carry them into execution, he is indictable at common law. *Salk. 380. 381.*

As they are not officers of record, they cannot take bail, but must secure the offenders until they can carry them before some justice of the peace to find sureties, &c. But it is said that although a constable cannot take surety for the peace by recognizance or bail, yet he may take an obligation to be sealed and delivered to the king's use. *Dalt. ch. 1. Cro. Eliz. 375, 376.^a*

What may be done by a constable may in like manner be done by his deputy, and he is within the statute of 7 Jac. 1. ch. 5, to plead the general issue. *2 H. H. 88, 97, 98.* This statute allows them double costs if a verdict shall pass for them, or the plaintiff becomes nonsuit, or suffer any discontinuance.

They may arrest suspicious night-walkers, and men that ride armed in fairs or markets. *2 H. H. 89.*

But they should be cautious how they act in this respect; for it is not lawful for a constable to take up a woman upon a bare suspicion only, having been guilty of no breach of the peace nor any illegal act. *Ibid. note.*

Watchmen may also apprehend night-walkers, and commit them to custody until the morning, and also felons and persons suspected of felony. *Ibid. 98.^a*

A peace-officer may justify an arrest on a reasonable charge of felony, without a warrant, although it *should afterwards appear that no felony had been committed; and it will not be false imprisonment as to the officer to detain such suspected person from Saturday night until the next Monday morning, in order to take his hearing before a magistrate (be-

[* 272]
All constables are punishable by indictment for neglect of duty required either by statute or common law. They cannot take bail; but it is said they may take an obligation sealed to the king's use. They can make deputies, who may act in like manner.

They may arrest suspicious night-walkers; but they must be cautious how they act in this respect. Watchmen may also apprehend night-walkers, &c. A peace-officer may arrest upon a reasonable charge of felony without a warrant; and detain

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^a This is said to be of an affray, or menaces of a breach of the peace, done in their own view. *2 H. H. 89.*

^b Indictment against a constable, as head of the nightly watch, for wilfully permitting a prostitute, committed to his care by a watchman, to escape before she was taken to justice. *Cro. Cir. Aff. 341. Vide Rex v. Bostie, 2 Burr. 864. Vide also Escape, and Extortion, post.*

PRECEDENTS of INDICTMENTS.

the party from
Saturday night
until the next
Monday morn-
ing.

ing the first opportunity for such hearing); but otherwise as to a private individual. *Samuel v. Payne and others*, Dougl. (1st edit.) 345. Vide doctrine under Murder, post, § 37, &c.

C O R O N E R.

Indictment against a coroner for refusing to take an inquisition.

Lincoln. **T**HE jurors for our lord the king upon their oath present, That on the twenty-seventh day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. one *D. C.* at *Long Leadenham*, in the county of *Lincoln*, was drowned and suffocated in a certain pond, and of that drowning and suffocating she the said *D. C.* then and there instantly died; and that the body of the said *D. C.* at *Long Leadenham* aforesaid, in the county aforesaid, lay dead, of which one *W. D.* late of *G.* in the county aforesaid, gentleman, afterwards, to wit, on the said twenty-seventh day of *May*, in the year aforesaid, then being one of the coroners of our said lord the king for the county aforesaid, at *G.* aforesaid, had notice: nevertheless, the said *W. D.* the duty of his office in that behalf not regarding, afterwards, to wit, on the said twenty-seventh day of *May*, in the year aforesaid, at *G.* aforesaid, in the county aforesaid, to execute his office of and * concerning the premises, and to take inquisition for our said lord the king, according to the laws and customs of this realm, concerning the death of the said *D. C.* unlawfully, obstinately, and contemptuously did neglect and refuse; and that the said *W. D.* no inquisition in that behalf as yet hath taken, to the great hindrance of justice, in contempt of our said lord the king and his laws, and against the peace of our said lord the king, his crown and dignity.

[* 274]

Indictment against a coroner for not returning his inquisition according to evidence.

Herefordshire. **T**HE jurors for our lord the king upon their oath present, That on the twelfth day of *February*, in the twenty-fifth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. one *A. D.* late of the parish of *L.* in the county of *Hereford*, spinster, came to her death at the same parish, in the county aforesaid, by one mortal bruise received on the right side of the head of her the said *A. D.* by some person or persons (to the jurors aforesaid as yet unknown), whereof one *W. G.* late of *B.* in the said county of *Hereford*, gentleman, being one of the coroners of our said lord the king in and for the county aforesaid, afterwards, to wit, on the same day and year aforesaid, at *B.* aforesaid, in the county aforesaid, had notice. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *W. G.* being such coroner as aforesaid, afterwards, to wit, on the same day and year aforesaid, at the parish of *L.* aforesaid, in the county aforesaid, did cause a jury of twelve good and lawful men of the said county, duly sworn * in that behalf, to enquire (upon view (a) of the body of the said *A. D.* there lying dead) by what means and in what manner the said *A. D.* came to her death; and that one *M. D.* and one *D. K.* good and lawful men, then and there appeared before the said coroner and the said jurors so sworn

Death of *A. D.*

That *W. G.* being coroner, &c.

[* 275]
(a) Vide 2 *H. H.* 60.
M. D. &c.

C O R O N E R.

to enquire touching the death of the said *A. D.* as aforesaid, and were in due manner and form sworn before the said coroner and that jury to give true evidence concerning the death of the said *A. D.* and that the said *M. D.* and *D. K.* then and there, upon their oath aforesaid, did give evidence to the said coroner and jury of that inquisition, that on the same day and year aforesaid, they the said *M. D.* and *D. K.* had found the said *A. D.* in a ditch in the same parish dead; and that it appeared to them as if some person or persons had struck the said *A. D.* a violent blow upon the right side of her head, with a certain stone there lying by her side, which had occasioned her death: nevertheless, the said *W. G.* the coroner aforesaid, not regarding the duty of his said office, nor the laws of this realm, did return an inquisition, under his hand and seal, unto the justices of our said lord the king, duly assigned to hold the assizes and general session of *oyer and terminer*, and who did hold the assizes and general session of *oyer and terminer* of our said lord the king, at *Hereford*, in and for the said county of *Hereford*, on *Wednesday* the sixteenth day of *March*, in the twenty-fifth year aforesaid, that the said *A. D.* died a natural death; to the manifest subversion of justice, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. [*Vide Extortion, post.*]

gave evidence that *A. D.* received a mortal bruise.

Breach.

Return that *A. D.* died a natural death.

* By stat. 3 *Edw. I.* ch. 9, *Coroners concealing felonies, or not doing their duty, through favour to the misdoers, shall be imprisoned a year, and fined at the king's pleasure.*

[* 276]

And by stat. 3 *Hen. VII.* ch. 1, *If any coroner be remiss, and make not inquisitions upon the view of the body dead, and certify the same to the gaol-delivery, he shall forfeit to the king an hundred shillings.*

By stat. 1 *Hen. VIII.* ch. 7, § 2, *Justices of assize and of the peace within the county have power and authority to enquire of and determine upon the defaults of coroners, by examination and presentment.* *Vide* 25 *Geo. II.* ch. 29. *Vide also* 1 *H. H.* 418. 2 *H. H.* 58.

The coroner is to put into writing the effect of the evidence, given upon oath before him and the jurors of the inquest. 2 *H. H.* 61.

Though a prisoner may be arraigned on the coroner's inquest finding it murder or manslaughter, yet a bill of indictment for murder may be preferred to the grand jury, and thereon he may be arraigned and tried, though the coroner's inquest amount only to manslaughter, &c. *Ibid.*

Arraignment on the coroner's inquisition.

Where one indicted on the coroner's inquest is found not guilty, the *petit jury* may enquire who killed the deceased, which serves as an indictment against the offender; and if they cannot tell who such person is, they commonly give in some fictitious name. *Ibid.* 65.

If there be an inquisition of murder or manslaughter, and also an indictment for the same offence, and the party is arraigned and acquitted on the indictment, it is necessary to quash the inquisition, or arraign the party upon it, who is to plead *auterfoits* acquit, or not guilty, and so be acquit on that also, otherwise he may be outlawed on record thereof. *Ibid.*

* But if both indictments be of the same nature, and for the same offence, he may be tried for both at once. *Ibid.*

[* 277]

For a variety of inquisitions by coroners, *vide* Index to *Cro. Cir. Aff.* 520. As to the law relating to coroners in general, *vide* Index to 2 *H. H.* title *Coroner*; 1 *Bac. Abr.* 491; 1 *Black. Com.* 346; 4 *Black. Com.* 289, 466; and *Umfreville's Lex Coronatoria.*

Law relating to coroners in general.

PRECEDENTS of INDICTMENTS;

C O T T A G E S.

BY stat. 31 Eliz. ch. 7, Cottages were prohibited to be erected without laying at least four acres of land to the same, and divers other restrictions as to inmates, &c. were thereby enjoined; but the same was repealed by stat. 15 Geo. III. ch. 32, setting forth, That the said statute of 31 Eliz. had laid the industrious poor under great difficulties to procure habitations, and tended very much to lessen population, and in divers other respects was inconvenient to the labouring part of the nation in general, and therefore the indictment contained in the former edition on that statute has been expunged.^a

[* 278]

* D E C E I T.

1. Indictment for defrauding a person of a sum of money, by colour of a false and counterfeit letter, and other false tokens, upon the statute 33 Hen. VIII. ch. 1. Vide Dalt. (edit. 1727) ch. 32. 2 Stra. 1127. 1 Haw. (6th edit.) 344.

See the preamble of the act.

Did pretend, &c.

[* 279]

Averment.

Middlesex. **T**HE jurors for our lord the now king upon their oath present, That *L. P.* late of the parish of *St. James*, within the liberty of *Westminster*, in the county of *Middlesex*, miller, being "an evil-disposed person, and not minding to get his living by truth and honest labour, according to the laws of this realm, but compassing and devising how he might unlawfully obtain and get into his hands and possession the monies of the honest liege subjects of our said lord the kin, for the maintenance of his unthrifty living," on the first day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, falsely and deceitfully did pretend and affirm to one *T. T.* that he the said *L. P.*'s name was *H. H.* and that he was the son of *H. H.* of *Newcastle*, in the county of *Stafford*, esq. and nephew to *Mr. H.* of *Newport*, in the county of *Salop*, (meaning *J. H.* of *Newport*, in the county of *Salop*, clerk,) and that the said *L. P.* a certain false and counterfeit letter, in the name of him the said *J. H.* as a true letter of the proper hand-writing of him the said *J. H.* falsely, fraudulently, and deceitfully to the said *T. T.* then and there did deliver (the said *J. H.* of *Newport*, in * the county of *Salop*, clerk, then and long before being the friend and intimate acquaintance of him the said *T. T.*) by which said false and counterfeit letter it was mentioned, that the said *J. H.* desired the said *T. T.* to supply the bearer thereof, *Mr. H. H.* with the sum of sixty guineas, and place it to his account (meaning the account of him the said *J. H.*) and that the said *T. T.* then and there believing the said false and counterfeit letter to be of the proper hand-writing of him the said *J. H.* did then and there pay and deliver to the said *L. P.* sixty pieces of gold coin, of the proper coin of this kingdom, called guineas, of the value of sixty-three pounds, of lawful money of *Great-Britain*; whereas in truth and in fact the said *J. H.* never did write or send, or cause to be written or sent, any such letter to the said *T. T.* defrauding the said *T. T.* to supply the said *H. H.* with any sum of money

^a There is another form of an indictment upon the same statute, *Cro. Cir. Aff.* 483, which should likewise be expunged. The Editor did not discover when it was printed that the statute had been repealed.

whatever:

whatever: and so the jurors aforesaid, upon their oath aforesaid, do And so, &c. say, that the said *L. P.* on the said sixth day of *November*, in the year aforesaid, at the said parish of *St. James*, within the liberty of *Westminster*, in the said county of *Middlesex*, by colour of the said counterfeit letter, and by the said false pretences, unlawfully, falsely, fraudulently, and deceitfully did obtain and get into his hands and possession, of and from the said *T. T.* and the said *L. P.* the said sum of sixty-three pounds, of lawful money of *Great-Britain*, of the monies of him the said *T. T.* and the said *L. P.* the said *T. T.* of his money aforesaid then and there fraudulently and deceitfully did receive and defraud, to the great damage and deceit of the said *T. T.* to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided.

* Offences of this kind depend upon the statute 33 Hen. VIII. ch. 1, by which it is enacted, *That if any person or persons shall falsely and deceitfully obtain, or get into his or their hands or possession, any money, goods, chattels, jewels, or other things, of any other person or persons, by colour or means of any false token or counterfeit letter, made in another man's name, to a special friend or acquaintance, for the obtaining money, &c. from such person, and shall be thereof convicted, by witness taken before the lord chancellor, or before the justices of assize, or before the justices of peace of any county, city, borough, town, or franchise in their general sessions, or by action in any of the king's courts of record, every such offender shall suffer such punishment, by imprisonment, setting upon the pillory, or otherwise by any corporal pain, except pains of death, as shall be appointed by those before whom he shall be so convicted.* [* 280]

That as well the justices of assize for the time being, as also two justices of the peace in every county, whereof the one to be of the quorum, may call and convene by process, or otherwise, to the said assizes or general sessions, any person being suspected of any of the offences aforesaid, and to commit or bail him till the next assizes or general sessions.

Lord Coke observes hereupon, that for this offence the offender cannot be fined, but corporal pain only inflicted. 3 Inst. 133.

But Mr. Hawkins observes, that there is a precedent in Croke's report^a, by which it appears, that one convicted on such a prosecution hath been adjudged not only to stand on the pillory, but also to pay a fine of five hundred pounds, and to be bound with good securities to his good behaviour. 1 Haw. 188.

The party grieved by such deceit has his remedy by way of action or otherwise, for the same money, goods, chattels, jewels, or other things so obtained, as he might * have had if this act had not been made. Stat. 33 Hen. VIII. ch. 1, § 4.^b [* 281]

2. Indictment at common law for winning goods at an unlawful game by throwing dice. Vide doctrine under Prec. 13, post.

Middlesex. THE jurors for our lord the king upon their oath present, That *T. H.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, labourer, and *W. B.*

^a Terry's case, Cro. Car. 564.

^b Indictments are seldom drawn upon this statute since the passing of the 30th of Geo. II. ch. 24. Vide Observations at the end of the abstract of 30 Geo. II. under this title, hereafter.

PRECEDENTS of INDICTMENTS.

late of the same, labourer, being evil-disposed persons, and not minding to get their livelihood by truth and honest labour, but by fraud and deceit maintaining their idle course of life, on the tenth day of *March*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, at an unlawful game, artifice, and practice, with dice, and by laying wagers with one *T. W.* relating to the throwing the dice, did fraudulently and deceitfully win, obtain, and get to themselves, of and from the said *T. W.* two pair of brass candlesticks, of the value of ten shillings, of the goods and chattels of the said *T. W.* and him the said *T. W.* of his said goods and chattels, in manner and form aforesaid, then and there fraudulently and deceitfully did deceive and defraud, to the great damage of the said *T. W.* and against the peace of our said lord the king, his crown and dignity.^a

[* 282] * 3. *Indictment for selling counterfeit Dutch guilders for good and true guilders.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *I. B.* late of the parish of *St. James*, within the liberty of *Westminster*, in the county of *Middlesex*, yeoman, being an evil-disposed person, and devising and intending one *W. H.* unjustly and injuriously to deceive and defraud, on the eleventh day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, sixteen pieces of false coin (amounting together to the value of seventeen shillings and fourpence, of lawful money of *Great-Britain*, and no more) counterfeited to the likeness and similitude of a certain foreign coin, made of silver, with an alloy of copper and other base coin, called *Dutch guilders*, unlawfully, fraudulently, and deceitfully did utter and sell to the said *W. H.* for the sum of twenty-six shillings and eightpence, of lawful money of *Great-Britain*, for and as true and good pieces of foreign coin called *Dutch guilders*, each guilder of the value of twenty-pence, of lawful money of *Great-Britain*, he the said *I. B.* then and there well knowing the said pieces of coin, so as aforesaid by him uttered and sold, to have been false and counterfeit, to the great damage and deceit of him the said *W. H.* and against the peace of our said lord the king, his crown and dignity.^b

4. *Indictment*

^a It has been adjudged, that any one may lawfully apprehend a common notorious cheat going about the country with false dice, and being actually caught playing with them, in order to have him before a justice of the peace. 2 *Harc.* 77. *Vide* *Caming*, *post.* *Prec.* 1, &c.

^b Indictment for a deception in the sale of wine, by bartering, and false personating, &c. *Gro. Cir. Aff.* 414, 2 *Lord Raym.* 1179. In this case the party injured was allowed to give evidence of the fact. *Per Holt*, In such private transactions, nobody else can be a witness of the circumstances of the fact but he that suffers. *Regina v. Mackartney & al'*, *Salk.* 286.

(a) Otherwise for selling by false measure, 3 *Burr.* 1697. *Vide* also 1 *Willf.* 301.

(b) *Wheatley's* case is also reported in 2 *Burr.* 1125, where *Dennison* says, "The *Queen v. Macarty* was a conspiracy, as well as false tokens."

- * 4. *Indictment for pledging a brass chain, coloured with gold, for and as pure gold.* [* 283]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. Sepulchre*, in the county of *Middlesex*, widow, being an evil-disposed person, and devising and intending to deceive and defraud one *C. D.* of his monies, on the ninth day of *October*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. craftily and deceitfully did offer and propose to the said *C.* to borrow of him the said *C.* the sum of five pounds, and that for securing the re-payment of the said sum of five pounds and interest, she the said *A.* would leave a pledge of a gold chain, with a gold locket, with the said * *C.* and she the said *A.* in farther prosecution of her devices and intentions aforesaid, did then and there give and deliver unto the said *C.* a gold locket, together with a brass chain, which same chain was coloured with certain materials producing the colour of gold, and not exceeding in the whole the value of fifteen shillings; and then and there fraudulently and deceitfully did pretend and affirm to the said *C.* that the said locket and chain were pure gold, and were worth five pounds, (she the said *A.* then and there well knowing the said chain to be brass, coloured with certain materials producing the colour of gold, and that the said locket and chain did not exceed the value of fifteen shillings in the whole;) and she the said *A.* under the false pretences aforesaid, and by pledging the said locket and chain to the said *C.* for and as a gold chain and a gold locket, of the value of five pounds, then and there fraudulently and unjustly did obtain, acquire, and get to herself, of and from the said *C.* the sum of five pounds, of lawful money of *Great-Britain*: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* the said *C. D.* of the said sum of five pounds, in manner aforesaid, fraudulently and deceitfully did deceive and defraud, to the great damage of the said *C.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a *Vide Falsæ Pretences, post.*

[* 284]

Did deliver, &c.

And so, &c.

- * 5. *Indictment at common law for uttering a counterfeit half guinea.* [* 285]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *G. H.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, labourer, and *B. H.*

It is presumed that the case of *Macarty and Fordenbourg*, 2 Lord Raym. 1179, is the same as that in *Salk.* 286, though they differ a little as to the name and the description of the offence.—*Raymond*, in page 1184, says, that *Pengelly* informed him judgment was given for the queen. See further observations under this title, hereafter.

^a Knowingly exposing to sale and selling wrought gold, under the sterling alloy, as and for gold of the true standard weight, is not indictable in a private person. The statutes relate only to goldsmiths; and it is not a common-law offence, being only a private cheat. *Corup* 323. Per Lord Mansfield in this case: It is certainly an imposition; but I incline to think it is one of those frauds only which a man's own common prudence ought to be sufficient to guard him against, and which therefore is not indictable; but the party injured is left to his civil remedy.

In *Regina v. Jones*, 2 Ld. Raym. 1013, Holt said, "Shall we indict one man for making a fool of another? Let him bring his action."

Vide Rex v. Osborn, 3 Burr. 1697, and the several cases there referred to.

PRECEDENTS of INDICTMENTS.

late of the same, labourer, being evil-disposed persons, on the fifth day of *August*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. one piece of false money, made of base metals, and coloured with a certain wash producing the colour of gold, to the likeness and similitude of a piece of good, lawful, and current gold money and coin of this realm called an half guinea, unlawfully, unjustly, and deceitfully did utter and pay to one *J. W.* for and as a piece of good and lawful gold money and coin of this realm called an half guinea, (they the said *G. H.* and *B. H.* then and there well knowing, and each of them well knowing, the said piece to have been false and counterfeit, as aforesaid,) to the great damage of the said *J. W.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

- [* 286] * 6. *Indictment at common law for uttering a counterfeit sixpence, and having another found in his custody.* [See Lord Mansfield's reasoning in the note, p. 284, 285, and stat. 15 Geo. II. ch. 28, under title *Coining*, ante, 219, &c.]

First count for uttering and paying, &c.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. M.* late of the parish of *St. Anne*, in the county of *Middlesex*, labourer, being an evil-disposed person, on the first day of *April*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, one piece of false money, made of certain mixed base metals, counterfeited to the likeness and similitude of a piece of good, lawful, and current coin of this realm called a sixpence, unlawfully, unjustly, and deceitfully did utter and pay to one *E. C.* for and as a piece of good and lawful money and coin of this realm called a sixpence, (he the said *A. M.* then and there well knowing the said piece to have been false and counterfeit as aforesaid,) to the great damage of the said *E. C.* and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *A. M.* on the said first day of *April*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully had in the custody and possession of him the said *A. M.* one other piece of false money, made of mixed base metals, counterfeited to the likeness and similitude of a piece of good, lawful, and current money and coin of this realm called a sixpence, (he the said *A. M.* then and there well knowing the said last-mentioned piece to have been false and counterfeit as aforesaid,) with an intent to utter and pay the said last-mentioned piece * of false and counterfeit money to one of the subjects of our said lord the king, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a

Second count for having counterfeit money in his possession, with intent to utter it.

[* 287]

7. *Indictment at common law for causing and procuring guineas filed and diminished to be uttered as good guineas.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *W. L.* late of the parish of *St. Mary Stratford, Bow*, in the county of *Middlesex*, yeoman, being an evil-

^a Indictments for this offence are more frequent on the statute of 15 Geo. II. disposed

disposed person, on the second day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, did unlawfully and deceitfully, with intent to defraud one *R. A.* utter and expose, and cause and procure to be uttered and exposed, to the said *R. A.* nine pieces of gold, for and as good and true guineas, of the proper money of this realm, notwithstanding none of the said nine pieces of gold, at the said time when they were so uttered and exposed, and caused and procured to be uttered and exposed, were good and true guineas, of the proper money of this realm; but each of them had been unlawfully filed, and by such filing diminished, and rendered defective of their weight, which before such filing they had, being before such filing good and true guineas, of the proper money * of this realm, he the said *W. L.* at the time he so uttered and exposed, and caused and procured to be uttered and exposed, the said nine pieces of gold as aforesaid, then and there well knowing, that none of them were good and true guineas, but that each of them had been so as aforesaid filed, diminished, and rendered defective of their weight, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.^a

[* 288]

8. *Indictment for obtaining a note into his hands, under pretence of inspecting the same, and tearing and cancelling it.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *R. K.* late of the parish of *St Mary M* in the county of *Middlesex*, labourer, being an evil-disposed person, on the twentieth day of *August*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, falsely, fraudulently, and deceitfully, and by false arts, colours, and pretences, did obtain, acquire, and get into his hands and possession, of and from one *H. W.* a certain promissory note, signed with the proper hand-writing of him the said *R. K.* bearing date the tenth day of *July*, then before, by which said note the said *R. K.* promised to pay to the said *H. W.* or his order, the sum of ten pounds, one month after the date of the same note, for value received by him the said *R. K.* to wit, under colour and pretence, that he the said * *R. K.* would inspect the said note, and then and there immediately re-deliver the same note to him the said *H. W.* and that he the said *R. K.* afterwards, to wit, on the said twentieth day of *August*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, fraudulently and unlawfully did cancel, tear, and destroy the said note (the said sum of ten pounds, in the said note mentioned, and every part thereof, then being unpaid to the said *H. W.* the proprietor thereof,) with an intent to deceive and defraud the said *H. W.* of the monies due and payable by virtue of the same note, to the great damage of the said *H. W.* and against the peace of our said lord the king, his crown and dignity.

The note.

[* 289]

^a Where a statute adds a farther penalty to an offence prohibited by the common law, there can be no doubt but that the offender may still be indicted, if the prosecutor think fit, at the common law. 2 *Haw.* 211. *Vide* also *Doctrine of Indictments*, ante, 95, § 7.

PRECEDENTS of INDICTMENTS.

9. Indictment for a fraud by indorsing a note after payment, whereby the prosecutor was obliged to pay a second time.

Kent. **T**HE jurors for our lord the king upon their oath present, That *G. J.* late of *Bromley*, in the county of *Kent*, filk-mercier, after the first day of *May*, in the year of our Lord one thousand seven hundred and five ^a, to wit, on the eighteenth day of *September*, in the year of our Lord one thousand seven hundred and eighty-one, at *Rocheſter*, in the ſaid county of *Kent*, made a certain note in writing, ſubſcribed with his own hand, commonly called a promiſſory note, bearing date on the ſame day and year laſt aforeſaid, by which note the ſaid *G.* promiſed to pay to one *J. H.* or his order, ten pounds, fourteen days after the date of the ſaid note, for value received by the ſaid *G.* by reaſon whereof, and by force of the ſtatute in that caſe made and provided, * the ſaid *G.* became liable to pay to the ſaid *J.* or his order, the ſaid ten pounds, according to the tenor of the ſaid note; and the ſaid ſum of money being unpaid, the ſaid *J.* afterwards, to wit, on the twentieth day of *November*, in the ſaid year of our Lord one thouſand ſeven hundred and eighty-one, at *Rocheſter* aforeſaid, in the ſaid county of *Kent*, falſely and fraudulently affirmed to the ſaid *G.* that the ſaid note was miſlaid, and could not be found by him the ſaid *J.* upon which falſe and fraudulent affirmation of the ſaid *J.* he the ſaid *G.* then and there paid to the ſaid *J.* the ſaid ten pounds, in full ſatisfaction and diſcharge of the ſaid note; and the ſaid note remaining in the hand and poſſeſſion of the ſaid *J.* he the ſaid *J.* late of *Rocheſter* aforeſaid, in the ſaid county of *Kent*, ſilversmith, contriving, and fraudulently and wickedly intending to injure the ſaid *G.* and to ſubject him to the payment of the contents of the ſaid note, notwithstanding his payment of the ſaid ten pounds to the ſaid *J.* as aforeſaid, afterwards, to wit, on the firſt day of *January*, in the twenty-second year of the reign of our ſovereign lord *George* the third, king of *Great-Britain*, &c. at *Rocheſter* aforeſaid, in the county aforeſaid, falſely and fraudulently, by an indorſement on the ſaid note ſubſcribed with the proper hand-writing of him the ſaid *J.* ordered the contents of the ſaid note to be paid to one *E. B.* and then and there delivered the ſaid note, ſo indorſed by him as aforeſaid, unto the ſaid *E. B.* and thereby, and by force of the ſaid ſtatute in that caſe made and provided, the ſaid *G.* became liable to pay to the ſaid *E. B.* the ſaid ten pounds mentioned in the ſaid note, and being ſo liable, he the ſaid *G.* afterwards, to wit, on the third day of *January*, in the year laſt aforeſaid, at *Rocheſter* aforeſaid, in the county aforeſaid, paid to the ſaid *E. B.* the ſaid ten pounds, mentioned in the ſaid note, to the great * damage of the ſaid *G.* to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.

Note.

[* 290]

Aſſertion by *J. H.* that the note was loſt.
Payment by *G.* to *J. H.*

Indorſement by *J. H.* to *E. B.*

whereby *G.* became liable, &c.

[* 291]

10. Indictment againſt a penſioner of Chelſea College, for defrauding the king of money by procuring himſelf to be admitted an out-penſioner of the ſame College, as of another regiment, and under pretence that he was not otherwiſe provided for by the government, whereas he was provided for, &c.

Middleſex. **T**HE jurors for our lord the king upon their oath preſent, That *W. C.* late of the pariſh of *St. Luke*, *Chelſea*, in the county of *Middleſex*, labourer, on the ſix

^a Vide 3 & 4 Ann. ch. 9.

teenth day of *June*, in the tenth year of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish of *St. Luke, Chelsea*, in the said county of *Middlesex*, was admitted an out-pensioner of the royal hospital at *Chelsea*, from the second regiment of foot of our said lord the king, then commanded by *J. S. esq.* by reason of his service as a soldier in the said regiment, and the said *W. C.* did continue such pensioner from the said fifteenth day of *June*, in the year aforesaid, until the twenty-fourth day of *December*, in the twenty-first year of the reign of our said lord the king, during which time he the said *W. C.* at the parish aforesaid, in the county aforesaid, did receive, of and from the paymaster of the said hospital, a pension of five-pence by the day. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *W. C.* being an evil-disposed person, and devising and intending fraudulently and unjustly to obtain and acquire to himself divers sums of money of and from the paymaster of the said hospital, and to defraud our said lord the king of divers sums of money, on the third day of *December*, * in the twelfth year of the reign of our said lord the king, at the parish aforesaid, in the county aforesaid, unlawfully, fraudulently, and deceitfully did cause and procure himself to be admitted an out-pensioner of the said hospital, as from the first regiment of foot guards, under pretence of his service as a soldier in the same regiment, and also under pretence that he the said *W. C.* was not otherwise provided for by the government; and the said *W. C.* did continue such pensioner as from the said first regiment of foot guards from the said third day of *December*, in the year last above mentioned, until the twenty-fourth day of *December*, in the twenty-first year of the reign of our said lord the king, at the parish aforesaid, in the county aforesaid; and the said *W. C.* the better to perfect his wicked devices and intentions, on the twenty-fourth day of *July*, in the thirteenth year of the reign of our said lord the king, and on divers other days and times during the time last above mentioned, at the parish aforesaid, in the county aforesaid, falsely and wickedly did depose and swear, upon his corporal oath, before *T. C. esq.* then and yet one of the justices of our said lord the king in and for the said county of *Middlesex*, that he the said *W. C.* was a pensioner of *Chelsea College*, meaning the said royal hospital of *Chelsea*, from the first regiment of foot guards, and that he the said *W. C.* was not otherwise provided for by the government; whereas in truth and in fact the said *W. C.* then, and during the whole time last above mentioned, to wit, from the said third day of *December*, in the said twelfth year of the reign of our said lord the now king, until the said twenty fourth day of *December*, in the said twenty-first year of the reign of our said lord the king, was otherwise provided for by the government than as a pensioner * from the first regiment of foot guards, that is to say, he the said *W. C.* during the whole time last above mentioned, was provided for and did receive a pension of five-pence by the day, as a pensioner of the said college or royal hospital of *Chelsea*, from the said second regiment, in manner and form in that behalf aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *W. C.* at divers days and times, between the said third day of *December*, in the said twelfth year of the reign of our said lord the king, and the said twenty-fourth day of *December*, in the twenty-first year aforesaid, at the parish aforesaid, in the county aforesaid, under the false pretence aforesaid, did fraudulently

Was admitted
an out pensioner
from the second
regiment of
foot.

[* 292]

Did cause himself to be admitted as a pensioner from the first regiment of foot guards.

Did swear upon oath before a justice of the peace that he was a pensioner from the latter regiment.
Averment.

[* 293]

Did receive, &c. lently receive and obtain, of and from the paymaster of the said hospital, divers sums of money, amounting in the whole to the sum of thirty pounds seventeen shillings and eleven pence, as a pensioner from the said first regiment of foot guards: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said *W. C.* in manner and form aforesaid, did fraudulently and deceitfully deceive and defraud our said lord the now king of the sum of thirty pounds seventeen shillings and eleven pence, to the great damage of our said lord the king, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

[* 294]

*11. *Indictment for a misdemeanor under the description of a conspiracy, in deceitfully producing and publishing a forged writing, purporting to be the request of a prosecutor to the attorney-general, to obtain a warrant for a noli prosequi, upon an indictment for an assault, found by the grand jury in the Court of King's Bench, and by colour of such writing obtaining thereof.*

Grand jury.

Indictment.

That *J. W. W. R. and A. F.*

combining, &c.

[* 295]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That formerly, to wit, on *Tuesday* next after three weeks of the *Holy Trinity*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. in the court of our said lord the king, before our said lord the king himself, (the said court then and still being at *Westminster*, in the county of *Middlesex*), by the oath of [name all the grand jury] good and lawful men of the county of *Middlesex* aforesaid, then and there impannelled, sworn, and charged to inquire for our said lord the king, for the body of the county aforesaid, it was presented in manner and form following, that is to say, *Middlesex*. The jurors for our lord the king upon their oath present [set forth the indictment verbatim]; as by the said indictment, in the said court of our said lord the king at *Westminster*, remaining filed of record, doth plainly appear. And the jurors aforesaid, now here sworn, upon their oath aforesaid, do further present, That *J. W.* late of the parish of *St. Clement Danes*, in the said county of *Middlesex*, dyer, *W. R.* late of the same, blacksmith, and *A. F.* late of the same, gentleman, on the twenty-ninth day of *September*, in the twenty-second year aforesaid, contriving, intending, and among themselves conspiring and combining, as much as in * them lay, the due course of law unlawfully and unjustly in that behalf to hinder and pervert, and a certain warrant of *L. K.* esq. then and yet being attorney-general of our said lord the king, by unlawful and by false and most wicked ways and means to obtain and procure, for the entry of a *noli prosequi* upon the indictment aforesaid, and for staying all proceedings thereupon, they the said *J. W. W. R.* and *A. F.* afterwards, to wit, on the said twenty-ninth day of *September*, in the said twenty-second year of the reign of our said lord the king, at the said parish of *St. Clement Danes*, in the county of *Middlesex* aforesaid, according to the conspiracy, combination, and agreement between them as aforesaid had, before the said *L. K.* esq. then and there being attorney-general of our said lord the king, did bring and produce, and every of them did bring and produce, a certain false, forged, and counterfeit writing, (by a certain ill-disposed person, to the said jurors now here sworn as yet unknown,) falsely forged, made, and counterfeited, purporting to be signed in the name and by the said *I. M.* the prosecutor

D E C E I T.

prosecutor of the said indictment, and to bear date the eighth day of September, in the twenty-second year aforesaid, and to contain the desire of him the said I. M. to the said attorney general to sign a warrant of *noli prosequi*, to stay all proceedings upon the said indictment, which said false, forged, and counterfeit writing is in the words and figures following, to wit, *Whereas T. M. and P. D. do stand indicted in his majesty's court of King's Bench, Westminster, for making an assault upon me, I. M. the tenth day of February last past, such indictment being found in Trinity term last in the said court; now I the said I. M. the prosecutor of such indictment, do hereby humbly desire, with all due submission to his present majesty's attorney-general, to sign a warrant of noli prosequi, to stay all * proceedings on such indictment: as witness my hand. Dated the eighth day of September, in the twenty-second year of the reign of our present sovereign lord king George the third, in the year of our Lord one thousand seven hundred and eighty-two. I. M. Signed under the hand-writing of the said I. M. in the presence of J. D. And that the said J. W. W. R. and A. F. afterwards, to wit, on the said twenty-ninth day of September, in the twenty-second year aforesaid, with force and arms, at the parish of St. Clement Danes, aforesaid, in the county aforesaid, before the said L. K. esquire, and then and there being attorney-general of our said lord the king as aforesaid, falsely, knowingly, subtilly, and deceitfully the said false, forged, and counterfeit writing did publish and declare, and every one of them did publish and declare, as a true writing, subscribed and signed by the said I. M. with intention, as aforesaid, such warrant of *noli prosequi*, of the said attorney-general of our said lord the king, to have and obtain (they the said J. W. W. R. and A. F. then and there well knowing, and every one of them well knowing, the said writing to be falsely made, forged, and counterfeited as aforesaid.) And the jurors aforesaid, now here sworn, upon their oath aforesaid, do further present, That the said J. W. W. R. and A. F. in further prosecution of their wicked contrivance and intention, and according to the conspiracy, combination, and agreement aforesaid, among themselves as aforesaid had, and their evil purpose and design to compleat and render effectual, on the said twenty-ninth day of September, in the twenty-second year aforesaid, at the parish of St. Clement Danes aforesaid, in the said county of Middlesex, before the said attorney-general of our said lord the king, did produce, and every one of them did produce, the said false, forged, and counterfeit writing, annexed to a certain affidavit in writing, * purporting to be an affidavit under the name of one J. J. subscribed and sworn, and supposed to be sworn before Sir E. P. knight, one of the justices of our said lord the king, assigned to hold pleas before the king himself, the tenor of which said affidavit is in the words and figures following:—J. J. of London, mariner, maketh oath, that he this deponent was present at the signing of the paper writing hereunto annexed, which imports a desire of a *noli prosequi*; that such writing so signed is of the proper hand-writing of I. M. who subscribed the same, for that this deponent knows him very well. J. J. Sworn at Serjeants-Inn, the ninth of September, one thousand seven hundred and eighty-two, before F. B. Whereas in truth and in fact the writing in the said affidavit mentioned was not, nor is, the proper hand-writing of him the said I. M. in the said affidavit likewise named, nor by him subscribed, (they the said J. W. W. R. and A. F. then and there well knowing, and every of them then and there well knowing, the writing in the said affidavit*

Paper writing.

[* 296]

Declared to be a true writing.

Writing produced annexed to an affidavit of J. J.

[* 297]

Affidavit.

Averment.

affidavit

Warrant of *noli
prosequi.*

[* 298]

affidavit mentioned, and to the same *affidavit* annexed, not to be the proper hand-writing of the said *I. M.* in the said *affidavit* named, nor by him subscribed,) but then and there well knowing, the matters in the same *affidavit* contained to be false and fictitious; and they the said *J. W. W. R.* and *A. F.* by colour and pretence, as well of the said false, forged, and counterfeited writing, as of the aforesaid *affidavit* thereunto annexed, afterwards, to wit, on the said twenty-ninth day of *September*, in the twenty-second year aforesaid, at the said parish of *St. Clement Danes*, in the county of *Middlesex* aforesaid, falsely, subtilly, knowingly, and deceitfully into their hands did obtain and have a certain warrant of *noli prosequi*, of and from the said *L. K.* then and there as aforesaid being attorney-general of our said lord the * king, for entering and causing to be entered a *noli prosequi* upon the indictment aforesaid, and for staying all proceedings thereupon, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.^a

12. *Indictment at common law for defrauding a person of money by counterfeiting the post-mark on a piece of paper folded up like a letter.*

[* 299]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *S. L.* late of the parish of *St. James, Clerkenwell*, in the county of *Middlesex*, labourer, being an evil-disposed person, and devising and intending to deceive and defraud the liege subjects of our said lord the king of their monies, by colour and pretext of the duties payable to our said lord the king for postage and conveyance of letters, on the first day of *May*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, in and upon a certain piece of paper, folded up and sealed in the form of a letter, directed for *Mr. S. R.* to be left at *Mr. H.* at the *Bear*, &c. [as the direction* may be] *London*, and inclosing another piece of paper, supposed to be a letter directed for *Mr. L. R. London*, fraudulently and deceitfully did counterfeit and resemble, and cause to be counterfeited and resembled, the impression of the mark or stamp used by the deputy post-master of the city of *Exeter* to mark letters sent by the post from the said city of *Exeter* to the city of *London*, to wit, the word *Exeter*, and also the impression of the mark or stamp used by the post-master general at the city of *London* to stamp letters brought by the post from other post towns to the said city of *London*, which said mark denotes the day and month when such letters are brought to the last-mentioned city; and that the said *S. L.* by colour of the said counterfeit impressions, and under pretence that he the said *S. L.* had paid the sum of eight-pence for the postage of the said letter, did then and there, to wit, the said first day of *May*, in the year aforesaid, at the said parish of *St. James, Clerkenwell*, in the county of *Middlesex* aforesaid, fraudulently and deceitfully demand, receive, and have of *J. H.* for and on behalf of the said *L. R.* the sum of eight pence, of lawful money of *Great-Britain*; and so the

^a Though this offence has been attended with strong deceptions, yet as there has been a conspiracy laid, the latter seems the better term to be inserted in the margin of the bill of indictment when preferred before the grand jury, (as it does not appear that the *noli prosequi* was entered), conspiracy being an offence of itself, though nothing be done in prosecution of it. *Vide Regina. v. Best. under Conspiracy, ante, 257.*

said

said S. L. him the said L. R. of the said sum of eight-pence, then and there fraudulently and deceitfully did deceive and defraud, to the great damage of the said L. R. and against the peace of our said lord the king, his crown and dignity.

* 13. *Indictment for defrauding a person of money, under pretence of procuring a license to sell ale.* [* 300]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That E. N. late of the parish of St. James, Clerkenwell, in the county of *Middlesex*, labourer, being an evil-disposed person, on the ninth day of *October*, in the twenty-first year of the reign of our sovereign lord George the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, falsely, fraudulently, and deceitfully did pretend and assert to one E. J. widow, that he the said E. N. would procure a certain licence, under the hands of two justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county aforesaid, for the said E. J. to keep an alehouse within the parish aforesaid; and the said E. N. under the colour and pretence aforesaid, then and there fraudulently and unlawfully did obtain, acquire, and get into the hands and possession of him the E. N. of and from the said E. J. the sum of six shillings, of lawful money of *Great-Britain*, of the monies of the said E. J. whereas in truth and in fact the said E. N. never did procure such licence for the said E. J. and so the jurors aforesaid, upon their oath aforesaid, do say, that the said E. N. the said E. J. of the said sum of six shillings, in manner and form aforesaid, then and there fraudulently and wickedly did deceive and defraud, to the great damage of the said E. J. and against the peace of our said lord the king, his crown and dignity.

Averment.

*Deceit and cozenage are offences at common law, and may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another * of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writings to another as her trustee upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment, &c. or by suppressing a will; or by levying a fine^a in another's name, or suing out an execution upon a judgment for him, or acknowledging an action in his name, without his privity, and against his will. 1 Haw. 187, 188.*

[* 301]

Frauds and deceptions punishable at common law.

Vide Prec. 16, post.

It seems to be the better opinion, that the deceitful receiving of money from one man to another's use, upon a false pretence of having a message and order to that purpose, is not punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie; and it

Must be an artful contrivance.

^a By 21 Jac. 1. ch. 26, § 2, it is made felony without benefit of clergy, but not so as to corrupt the blood, to acknowledge, or procure to be acknowledged, any fine, recovery, deed enrolled, statute, recognizance, bail, or judgment, in the name of any other person or persons not privy or consenting to the same. *Vide Bail, ante.*

PRECEDENTS of INDICTMENTS.

is said to be needless to provide severe laws for such mischiefs against which common prudence and caution may be a sufficient security. Ibid. 188. As in the case of Regina v. Jones, Salk. 379, and 2 Ld. Raym. 1013, where the defendant came to the prosecutor, and pretended that he was sent by J. S. to receive 20l. for his use.

Some of the above-mentioned offences are punishable not only with fine and imprisonment, but also with infamous punishment, (as cheating with false dice, especially if the offender be a common gamester); others are punishable with fine and imprisonment only by the discretion of the judges, which is regulated by the circumstances of each particular case. 1 Haw. 188. Vide 30 Geo. II. post, and Prec. 4, 5, ante. Vide also Extortion, post.

14. Indictment on 30 Geo. II. ch. 24, § 1, for obtaining goods under false pretences of being merchants of good fortune, &c.

First count.

LONDON. **T**HE jurors for our present sovereign lord the king upon their oath present, That *J. B.* late of London, yeoman, *T. A.* late of the same, yeoman, and *W. R.* late of the same, yeoman, being wicked and evil-disposed persons and common cheats, and contriving and intending unlawfully, fraudulently, and deceitfully to cheat and defraud one *T. R.* an honest and worthy subject of this realm, of his goods and merchandizes, for the support of their profligate way of life, on the twenty-second day of February, in the sixth year of the reign of our sovereign lord George the third, king of Great-Britain, &c. with force and arms, at London aforesaid, to wit, in the parish of *St. Mary le Bow*, in the ward of *Cheap*, did falsely, unlawfully, knowingly, and designedly^b, fraudulently and wickedly pretend to the said *T. R.* that the said *W. R.* then was a merchant of great fortune, who wanted to purchase horses to send them abroad, and that he then was a housekeeper at *Penge Common*, in the county of *Kent*; whereas in truth and in fact the said *W. R.* was not then a merchant of great fortune who wanted to purchase horses in order to send them abroad, nor was then a housekeeper at *Penge Common* aforesaid, in the said county of *Kent*, as the said *J. B. T. A.* and *W. R.* did then and there, to wit, at London aforesaid, in the parish and ward aforesaid, so falsely pretend to the said *T. R.*: and the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. B. T. A.* and *W. R.* by the false pretences aforesaid, did then and there unlawfully, knowingly, and designedly obtain from the said *T. R.* divers goods and merchandizes, that is to say, one mare and six geldings^b, of him the said *T. R.* of great price and value, to wit, of the price and value of one hundred and forty pounds, of lawful money of Great-Britain, with intent then and there to cheat and defraud the said *T. R.* of the same, to the great damage of the said *T. R.* to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. And the jurors aforesaid for our said lord the king, upon their oath aforesaid, do further present, That the said *J. B. T. A.* and *W. R.* being wicked and evil-disposed persons and common cheats, and contriving and intending unlawfully,

Did pretend that *W. R.* was, &c. and wanted to purchase horses, in order to send them abroad.

[* 303]

Did obtain, &c.

Second count, omitting that *W. R.* wanted horses in order to send them abroad.

^a Necessary words. See the statute, hereafter.

^b They must be called "goods and merchandizes," as cattle are not expressed in the act.

fraudu-

fraudulently, and deceitfully to cheat and defraud the said *T. R.* of his goods and merchandizes, for the support of their profligate way of life, afterwards, to wit, on the same day and year aforesaid, with force and arms, at *London* aforesaid, in the parish and ward aforesaid, did falsely, fraudulently, and wickedly pretend to the said *T. R.* that the said *W. R.* then was a merchant of great fortune, and that he then was a housekeeper at *Penge Common* aforesaid, in the said county of *Kent*; whereas in truth and in fact the said *W. R.* was not then a merchant of great * fortune, nor was then a housekeeper at *Penge Common* aforesaid, in the said county of *Kent*, as the said *J. B. T. A.* and *W. R.* did then and there, to wit, at *London* aforesaid, in the parish and ward aforesaid, so falsely pretend to the said *T. R.*: and the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. B. T. A.* and *W. R.* by the false pretences last aforesaid, did then and there unlawfully, knowingly, and designedly obtain from the said *T. R.* divers goods and merchandizes, that is to say, one mare and six geldings, of him the said *T. R.* of great value, to wit, of the value of one hundred and forty pounds, of lawful money of *Great-Britain*, with intent then and there to cheat and defraud the said *T. R.* of the same, to the great damage of the said *T. R.* to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. And the jurors aforesaid for our said lord the king, upon their oath aforesaid, do further present, That the said *J. B. T. A.* and *W. R.* being wicked and evil-disposed persons and common cheats, and contriving and intending unlawfully, fraudulently, and deceitfully to cheat and defraud the said *T. R.* of his goods and merchandizes, for the support of their profligate way of life, afterwards, to wit, on the same day and year aforesaid, with force and arms, at *London* aforesaid, in the parish and ward aforesaid, did falsely, fraudulently, and wickedly pretend to the said *T. R.* that the said *W. R.* then was a merchant; whereas in truth and in fact the said *W. R.* was not then a merchant, as the said *J. B. T. A.* and *W. R.* did then and there falsely pretend to the said *T. R.*: and the jurors aforesaid, upon their oath aforesaid, do further present, That the * said *J. B. T. A.* and *W. R.* by the false pretence last aforesaid, did then and there unlawfully, knowingly, and designedly obtain from the said *T. R.* divers goods and merchandizes, that is to say, one mare and six geldings, of him the said *T. R.* of great value, to wit, of the value of one hundred and forty pounds, of lawful money of *Great-Britain*, with intent to cheat and defraud the said *T. R.* of the same, to the great damage of the said *T. R.* to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. ^a

[* 304]

Did obtain, &c.

Third count,
omitting the residence, &c.

Did pretend, &c.

[* 305]

Did obtain, &c.

15. *Indictment on 30 Geo. II. ch. 24, § 1. for obtaining goods from a tradesman, under pretence of being a servant to one of his customers.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. James*, within the liberty of *Westminster*, in the county of *Middlesex*,

^a See the observations at the end of the statute, hereafter.

yeoman,

[* 306]
Did pretend, &c.

Did obtain, &c.

Whereas, &c.

yeoman, being an evil-disposed person, and a common cheat, and contriving and intending unlawfully, fraudulently, and deceitfully to cheat and defraud one *C. D.* of the parish aforesaid, woollen-draper, of his goods, wares, and merchandizes, for the support of his profligate way of life, on the first day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, *knowingly*, and *designedly* did falsely * pretend to the said *C. D.* that he the said *A. B.* then was the servant of one *E. A.* of *tailor*, (the said *E. A.* then and long before being well known to the said *C. D.* and a customer of the said *C. D.* in his said business and way of trade;) and that he the said *A. B.* was then sent by the said *E. A.* to the said *C. D.* for five yards of certain superfine woollen cloth; by which said false pretences the said *A. B.* did then and there, to wit, at the parish of *St. James* aforesaid, in the county aforesaid, unlawfully, *knowingly*, and *designedly* obtain from the said *C. D.* five yards of superfine woollen cloth, of the value of four pounds fifteen shillings, of the goods, wares, and merchandizes of the said *C. D.* with intent then and there to cheat and defraud him the said *C. D.* of the same; whereas in truth and in fact the said *A. B.* was not then the servant of the said *E. A.* and whereas he the said *A. B.* was not then or ever had been sent by the said *E. A.* to the said *C. D.* for the said cloth, or for any cloth whatsoever, to the great damage and deception of the said *C. D.* to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. ^a

[* 307]

First count
stating the of-
fence to be with
an intent to
cheat and de-
fraud the rest of
the members.

* 16. *Indictment, on 30 Geo. II. ch. 24, § 1, against a member of a beneficial club or society, for obtaining money belonging to the rest of the members, under false pretences.*

Worcestershire. **T**HE jurors for our lord the king upon their oath present, That on the fourteenth day of *September*, in the twenty-sixth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at *Kidderminster*, in the county of *Worcester*, certain persons united together and formed themselves into a certain lawful and beneficial club or society, called, &c. [as the name may be], under certain printed articles, rules, orders, or regulations made for the good order and government of the said club or society, and then and there, and on divers other days and times between that day and the third day of *May*, in the twenty-ninth year of the reign of our said lord the king, contributed and paid divers large sums of money, amounting in the whole to a large sum, to wit, the sum of one hundred pounds and upwards, of lawful money of *Great-Britain*, into the said club or society, and deposited the same in a certain box, left in the dwelling-house of one *T. R.* at *Kidderminster* aforesaid, commonly called or known by the name or sign of, &c. [as it may be], and there kept for the use, benefit, and advantage of the members of the said club or society for the time being: and the jurors aforesaid, upon their oath aforesaid, do further present, That in and by a certain article

a *Vide* observations under Prec. 4, 5, 13, *ante*, and the next Precedent.

A legal possession of property cannot be obtained through the medium of a fraud. *Sbarflet's case*, *L. Cr. Ca. 95.*

D E C E I T.

of the said rules and orders of the said club or society it is declared, ordered, and agreed, that, &c. [*here recite the article relating to the payment of money towards the funerals of the members' wives*]: and the jurors aforesaid, upon their oath aforesaid, do further * present, That on the same day and year last aforesaid, at *Kidderminster* aforesaid, one *L. P.* late of *K.* aforesaid, in the county aforesaid, labourer, together with one *A. B.* one *C. D.* &c. [*here insert the rest of the members' names which appear by the club book to be existing at this time*], were members of the said club or society, contributing and paying money into and for the use of the said club or society, that is to say, for the general benefit and advantage of all the members thereof, at the said house of the said *T. R.* for the purpose (amongst other things) mentioned, declared, and contained in the said article above mentioned and set forth: and the jurors aforesaid, upon their oath aforesaid, do further present, That on the same day and year last aforesaid, at *K.* aforesaid, in the county aforesaid, a large sum of money, to wit, the sum of one hundred pounds [*this need not be certain: let it be something under the sum contained in the box at this time*], of like lawful money, was and remained in the said box, kept for the purpose in that behalf aforesaid, in the said house of the said *T. R.* there, before then deposited therein by and for and on the behalf of all the members of the said club or society: and the jurors aforesaid, upon their oath aforesaid, do further present, That by the assent and concurrence of all the members of the said club or society, it had been usual and customary, during all the time aforesaid, (except the nights on which the said club or society has been there holden,) for the members of the said club or society, having a right or occasion to withdraw or receive any money, to which they have been entitled by the articles, rules, and orders of the said club or society, from and out of the said box, to apply to the said *T. R.* or the wife of him the said *T. R.* for the payment of the same, upon condition that he the said *T. R.* should * be repaid the same from and out of such money contained in the said box, for the purpose in that behalf aforesaid, on some subsequent night on which the said club or society should be holden at the said house of him the said *T. R.* at *K.* aforesaid: and the jurors aforesaid, upon their oath aforesaid, do further present, That the said *L. P.* well knowing all and singular the premises aforesaid, and being a wicked and evil-disposed person, and a common cheat, and contriving and intending unlawfully, fraudulently, and deceitfully to cheat and defraud the said [*all the rest of the members*], being such members of the said club or society as aforesaid, of their money, for the support of his profligate way of life, on the said third day of *May*, in the twentieth year aforesaid, with force and arms, did go to the said house of the said *T. R.* at *K.* aforesaid, in the county aforesaid, in which the said box was so kept, containing the said last-mentioned sum of money, for the purpose in that behalf aforesaid, and then and there unlawfully, knowingly, and designedly did, under colour of the said article, so mentioned and set forth as aforesaid, contained in the said rules and orders above mentioned, falsely pretend to *M.* the wife of the said *T. R.* that a female person, then pretended to have been lately the wife of him the said *L. P.* was then dead, and that he the said *L. P.* then wanted thirty shillings (meaning thirty shillings to be repaid to the said *T. R.* from and out of the said money then contained in the said box for the purpose in that behalf aforesaid) to bury his said wife (meaning a supposed female person then

Article upon which the money was obtained.

[* 308]
The defendant *L. P.* and others were members.

That the sum of one hundred pounds

was deposited in the box.

Customary

to apply to *T. R.* the owner of the house where the club was holden, for money, &c.

[* 309]

That *L. P.* well knowing the premises, and being, &c.

for the support of his profligate way of life, did

pretend to *T. R.*'s wife that the wife of him the said *L. P.* was dead, and that he wanted money to bury her.

PRECEDENTS of INDICTMENTS.

By means, &c.

[* 310]

did obtain, &c.

with intent, &c.

Averments.

Second count,
stating the of-
fence to be with
an intent to
cheat and de-
fraud the owner
of the house,
from whose wife
he received the
money.

[* 311]

Money paid in-
to the box.

Article, &c.

then and there intimated and alledged by him the said *L. P.* to the said *M. R.* to have been then lately his wife); by means of which said false pretences he the said *L. P.* afterwards, to wit, on the same day and year last aforesaid, with force and arms, at *K. ** aforesaid, in the county aforesaid, unlawfully, knowingly, and designedly did obtain from the said *M.* the wife of the said *T. R.* the said sum of thirty shillings, under pretence and on condition that the same should be repaid to the said *T. R.* in manner in that behalf aforesaid, with intent then and there to cheat and defraud all the said other persons above particularly mentioned to be and then being members of the said *club* or *society*, as aforesaid, of a great part, to wit, the sum of, &c. [*any sum above what the party indicted paid into the box*], the sum of being over and above and exclusive of all sums of money whatsoever which he the said *L. P.* had paid or caused to be paid into the said *club* or *society*, or deposited in the box for the purpose in that behalf aforesaid, to wit, at *K.* aforesaid; whereas in truth and in fact there was not any person whatsoever, at any time the wife of him the said *L. P.* dead at the said time he so made the false pretences to the said *M. R.* as aforesaid; and whereas in truth and in fact he the said *L. P.* at the time of the said false pretences, did not want the sum of thirty shillings, or any sum of money whatsoever, for the purpose of burying his wife, or of any person whatsoever having then lately been the wife of him the said *L. P.* and whereas in truth and in fact the said false pretences of the said *L. P.* were wholly fabricated on purpose to cheat and defraud the said, &c. [*all the rest of the members*] of the said sum of

in contempt of our said lord the king and his laws, to the great damage of the said [*as before*], to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That on ** the* ^a day of

in the twenty-ninth year aforesaid, and long before, he the said *L. P.* together with one *A B.* one *C. D.* one *E. F.* &c. [*all the rest of the members*], at the said house of the said *T. R.* at *K.* aforesaid, in the county aforesaid, had united together as members of, and formed themselves into, a certain beneficial *club* or *society*, called, &c. [*as before*], under certain articles, rules, orders, or regulations for the good order, regulation, and government of the said last-mentioned *club* or *society*, and then and there, and on divers other days and times, as well before as afterwards, contributed and paid divers large sums of money, amounting in the whole to a large sum, to wit, the sum of one hundred pounds and upwards, of like lawful money, into the said last-mentioned *club* or *society*, and deposited the same in a certain box kept for the said last-mentioned *club* or *society*: and the jurors aforesaid, upon their oath aforesaid, do further present, That in and by a certain article of the rules and orders of the said last-mentioned *club* or *society*, it is (with the privity and knowledge of the said *T. R.* and *M.* his wife) declared, ordered, and agreed, that, &c. [*here insert the article relating to the burials, as before*]: and the jurors aforesaid upon their oath aforesaid, do further present, That on the said third day of

^a The club-night of the day preceding the time of committing the offence.

May,

May, in the twenty-ninth year aforesaid, at K. aforesaid, the said last-mentioned box, containing a large sum of money, to wit, the sum of, &c. [as before], of like lawful money, remained and continued in the said house at K. aforesaid, under the care and custody of the said T. R. for * the purpose in that behalf aforesaid: and [* 312] the jurors aforesaid, upon their oath aforesaid, do further present, That the said L. P. well knowing all and singular the premises last aforesaid, and being a wicked and evil-disposed person, and a common cheat, and contriving and intending unlawfully, fraudulently, and deceitfully to cheat and defraud the said T. R. of his money for the support of his profligate way of life, afterwards, to wit, on the said third day of May, in the twenty-ninth year aforesaid, with force and arms, did go to the said house of the said T. R. at K. aforesaid, in the county aforesaid, in which the said last-mentioned box was so kept, containing the said last-mentioned sum of money, for the purpose in that behalf aforesaid, and then and there unlawfully, knowingly, and designedly, under colour of the said article above set forth and contained in the said rules and orders last above mentioned, did falsely pretend to the said M. the wife of the said T. R. that a female person, then lately the wife of him the said L. P. was then dead, and then and there requested of her the said M. R. to let him the said L. P. have thirty shillings (meaning the said last-mentioned thirty shillings to be in right of his being such a member of the said last mentioned club or society) for the purpose of burying his wife (meaning a supposed female person then and there intimated and alledged by him the said L. P. to have been then lately his wife); by means of which said last-mentioned false pretences he the said L. P. afterwards, to wit, on the same day and year last aforesaid, with force and arms, at K. aforesaid, in the county aforesaid, unlawfully, knowingly, and designedly did obtain from the said M. R. the said last-mentioned sum of thirty shillings, of the money of the said T. R. with intent then and there to cheat and defraud the said T. R. of the * same, to wit, at K. aforesaid, in the county aforesaid; whereas in truth and in fact there was not any person whatsoever, at any time the wife of him the said L. P. dead at the time he so made the said last-mentioned false pretences to the said M. R. as aforesaid; and whereas in truth and in fact he the said L. P. at the time of the said last-mentioned false pretences did not want the said last-mentioned sum of thirty shillings, or any sum of money whatsoever, for the purpose of burying his wife, or of any person whatsoever having then lately been the wife of him the said L. P. and whereas in truth and in fact the said last-mentioned false pretences of the said L. P. were wholly fabricated on purpose to cheat and defraud the said T. R. of the said last-mentioned sum of thirty shillings, in contempt of our said lord the king and his laws, to the great damage of the said T. R. to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

The defendant was tried on the above indictment at Worcester July session, 1789, convicted, and sentenced to be imprisoned for twelve months: which sentence was put in execution, and the judgment remains unimpeached.

By 30 Geo. II. ch. 24. § 1, it is enacted, That all persons who, knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons money, goods, wares, or merchandizes, The statute commonly called Fielding's Act.

PRECEDENTS of INDICTMENTS.

[* 314]

with intent to cheat or defraud any person or persons of the same, shall be deemed offenders against the law and the public peace; and the court before whom such offender or offenders shall be tried shall, in case he, she, or they be convicted of any * of the said offences, order such offender or offenders to be fined and imprisoned, or to be put in the pillory, or publicly whipped, or to be transported, as soon as conveniently may be, according to the laws made for transporting of felons, for the term of seven years, as the court in which any such offender or offenders shall be convicted shall think fit and order.

The false pretences must be shewn.

An indictment charging the defendant with obtaining money by false pretences is insufficient, if it does not shew what the false pretences were; and if he be convicted on it, the court will reverse the judgment upon a writ of error. The King against Thomas Mason, 2 Term Rep. 581.

So must false tokens, on 33 Hen. VIII. ch. 1. Several instances of fraud and deceit.

In an indictment on 33 Hen. VIII. ch. 1, the false token made use of must be set forth; and it has been holden to be a false token to use, for the purposes of deceit, a counterfeit pass, or a pretended power to discharge soldiers; or to obtain goods upon pretence of being at age and then pleading infancy; or to produce papers purporting to be orders from abroad, and under the pretence of being a merchant, to obtain goods; or to exchange a spurious wine for a genuine commodity under the pretence of being a merchant and broker; or to sell the flesh of an unbaited bull as for steer beef; or to sell any commodity by a false measure: but selling beer short of the just and due measure is not an indictable offence, nor selling gum of one denomination for that of another. 1 Haw. (6th edit.) 345, and the several authorities cited. Vide Prec. 3, 4, 5, 13, ante, and title "Miller," post.

[* 315]

* E M B E Z Z L E M E N T.

(a) But an indictment will not lie for inciting an apprentice to leave his master's service. Dalt. (edit. 1727) 191.

Indictment for (a) enticing an apprentice to embezzle his master's goods.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. B.* late of the parish of *St. Mary M.* in the county of *Middlesex*, glover, on the seventh day of *August*, in the twenty first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, falsely, subtilly, and unlawfully did solicit, incite, and persuade one *J. N.* an apprentice to *W. K.* of the same parish and county, baker, secretly and clandestinely to take and embezzle divers goods and chattels of the said *W. K.* and to give and deliver such goods and chattels to him the said *J. B.* and that the said *J. B.* afterwards, to wit, on the said seventh day of *August*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, three bushels of flour, of the value of fifteen shillings, of the goods and chattels of the said *W. K.* by the said *J. N.* then lately before, on the same day and year aforesaid, by the solicitation, incitement, procurement, and persuasion of the said *J. B.* taken and embezzled, then and there falsely, knowingly, subtilly, and unlawfully did receive, obtain, and have of and from the said *J. N.* to the great damage of the said *W. K.* to the evil example of all others

a The indictment should set forth that the apprentice did embezzle his master's goods; for there must be some fact done in consequence of the enticing. Dalt. (edit. 1727) 191.

in

E S C A P E.

in the like case offending, and against the peace of our said lord the king, his crown and dignity.

This indictment is intended where the master wishes to spare the apprentice on account of his youth, &c. and means to prosecute a receiver of the above description only for a misdemeanor.

* E S C A P E.

[* 316]

Indictment at common law against a constable for negligently permitting a man to escape that was committed for a rape.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That on the first day of *June*, in the twenty-first year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. one *J. S.* at the parish of *St. Leonard, Shoreditch*, in the county of *Middlesex*, was brought by one *J. B.* then being one of the constables of the same parish, before *A. C.* esq. then and yet being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county; and the said *J. S.* then and there was charged by one *D. T.* spinster, upon the oath of the said *D.* with having had carnal knowledge of her body against her will; and the said *J. S.* then and there was examined before the said *A. C.* the justice aforesaid, touching the aforesaid offence to him as above charged; upon which the said *A. C.* justice of the peace aforesaid, did make a certain warrant under his hand and seal, in due form of law, bearing date the said first day of *June*, in the year aforesaid, directed to the keeper of *Newgate* or his deputy, commanding him the said keeper, or his deputy, that he should receive into his custody the said *J. S.* brought before him, and charged upon the oath of the said *D. T.* with the * premises above specified; and the said justice by the aforesaid warrant did command the said keeper of *Newgate*, or his deputy, to safely keep him there until he by due course of law should be discharged; which same warrant afterwards, to wit, on the said first day of *June*, in the said twenty-first year of the reign of our said lord the king, at the parish aforesaid, in the county aforesaid, was delivered to the said *J. B.* then being one of the constables of the same parish as aforesaid, and then and there having the said *J. S.* under his custody for the cause aforesaid; and the said *J. B.* then and there was required and commanded by the said *A. C.* the aforesaid justice, immediately to convey the said *J. S.* to the said gaol of *Newgate*, and to deliver him the said *J. S.* to the keeper of the gaol, or his deputy, together with the warrant aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. B.* late of the parish aforesaid, in the county aforesaid, baker, afterwards, to wit, on the said first day of *June*, in the twenty-first year aforesaid, then as aforesaid being one of the constables of the said parish, and then having the said *J. S.* in his custody for the cause aforesaid, at the parish aforesaid, in the county aforesaid, the said *J. S.* out of the custody of him the said *J. B.* unlawfully and negligently did permit to escape, and go at large whithersoever he would, to the great hindrance of justice, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. *

That one *J. S.* was brought by *J. B.* being a constable, before a justice;

who was charged, &c.

Warrant,

commanding, &c.

[* 317]
Safely to keep, &c.

Delivery of the warrant to the constable who had *J. S.* in custody.

Escape.

* It will be the safer way to add a count for a wilful escape, if the defendant designedly omitted to do his duty.

[* 318]

** Indictment at common law against a constable for negligently permitting a man to escape, who was arrested by him for a misdemeanor.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That on the first day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish of *Pinner*, in the county of *Middlesex*, one *S. C.* came before *A. K.* esq. then and yet one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county; and the said *S. C.* did then and there, on his oath, before the same justice, charge, accuse, and give information against one *W. M.* of the parish aforesaid, in the county aforesaid, yeoman, for a certain misdemeanor, in taking fish out of the pond of the most noble *J. duke of C.* at *Edgware*, in the said county of *Middlesex*; whereupon he the said *A. K.* the justice aforesaid, did then and there, to wit, at the parish of *Pinner* aforesaid, in the county aforesaid, make a certain warrant, under his hand and seal, in due form of law, directed to the constable or headborough of the parish of *Pinner* aforesaid, in the county aforesaid, thereby requiring them to take the body of the said *W. M.* and bring him before the said *A. K.* the justice aforesaid, to answer to such matters and things as should be alledged against him touching the said misdemeanor; which said warrant, afterwards, to wit, on the same day and year aforesaid, at *Edgware* aforesaid, in the county aforesaid, was delivered to one *T. W.* then being one of the constables of the said parish of *Pinner*, in due form of * law to be executed; by virtue of which said warrant the said *T. W.* afterwards, to wit, on the said first day of *January*, in the year aforesaid, at the parish of *Pinner* aforesaid, in the said county, did take and arrest the body of the said *W. M.* and him the said *W. M.* in his custody for the cause aforesaid had: nevertheless, the said *T. W.* of the said parish of *Pinner*, in the county aforesaid, yeoman, afterwards, to wit, on the said first day of *January*, in the year aforesaid, the duty of his office in that respect not regarding, at the parish of *Pinner* aforesaid, in the county aforesaid, unlawfully and negligently did permit the said *W. M.* to escape, and go at large whithersoever he would, out of the custody of him the said *T. W.* to the great hindrance of justice, in contempt of our said lord the king and his laws, and against the peace of our said lord the king, his crown and dignity.

Charge before a justice of the peace, &c.

Warrant.

Its delivery to the constable,

[* 319]

who took the offender.

Escape.

Indictment at common law against a gaoler for negligently permitting a prisoner to escape out of his custody, brought by habeas corpus from another gaol.

Lincolnshire. **T**HE jurors for our lord the king upon their oath present, That formerly, to wit, on the a day of in the twentieth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. our said lord the king commanded the sheriff of his county of *Lincoln*, by his writ issued out of the court of our said lord the king, before the king himself, at *Westminster*, in the county of *Middlesex*, in these words [*here recite the writ of habeas corpus*]: which said writ, af-

Writ issued.

[* 320]

a Teste of the writ.

terwards

afterwards, to wit, on the first day of *May*, in the year aforesaid,
 at *Lincoln*, in the county aforesaid, was delivered to *A. B.* then Its delivery to
 sheriff of the said county of *Lincoln*, by *V. K.* esq. then sheriff of the sheriff of
Bucks aforesaid, together with the body of the said *A. Q.* and the *L.* by the sheriff
 cause of taking and detaining of the said *A. Q.* according to the of *B.*
 direction and command of a writ of our said lord the king of *habeas*
corpus, then lately before issued out of the court aforesaid, to the
 same sheriff of *Bucks*. And the said sheriff of *Bucks* did then and Certificate,
 there certify to the said sheriff of *Lincoln*, that then lately before, to
 wit, on the tenth day of *April*, in the year aforesaid, *F. B.* esq.
 then one of the justices of our said lord the king, assigned to keep
 the peace of our said lord the king in and for the said county of
Bucks, and also to hear and determine divers felonies, trespasses,
 and other misdeeds committed in the same county, did make a cer- Warrant.
 tain warrant, under his hand and seal, bearing date the same day and
 year, directed to the constable of *Newport-Pagnell*, and also to the
 gaoler of our said lord the king at *Aylesbury*, in the said county of
Bucks, or his deputy, and thereby recited, that when the said *A.* Its recital,
Q. was brought before the said justice, for suspicion of feloniously
 stealing a black mare from *Mr. W.* of *Litchfield*, in the county of
Stafford, which he offered to sell at *Newport-Pagnell* aforesaid, and
 when the said *Mr. W.* had described and owned the said mare, the
 said justice, by his warrant aforesaid, did require the said constable requiring the
 to convey the said *A. Q.* to the gaol of our said lord the king at constable to
Aylesbury, and there to deliver him to the keeper of the gaol afore- convey, &c.
 said, or his deputy, who was thereby required to keep him in safe
 custody until he should from thence be delivered by due course of
 law; which said *A. Q.* so being delivered to the *said sheriff of
Lincoln, in form aforesaid, afterwards, to wit, on the first day of [* 321]
May, in the year aforesaid, by the said last-mentioned sheriff, by
 virtue of the writ of our said lord the king first above recited, was
 carried to the gaol of our said lord the king at *Lincoln* aforesaid, Prisoner carried
 there to be kept until he should be delivered from thence by due to *L.* gaol.
 course of law; and that one *J. S.* late of *Lincoln* aforesaid, in the
 said county of *Lincoln*, yeoman, afterwards, to wit, on the first
 day of *June*, in the twentieth year aforesaid, then being keeper of
 the said last-mentioned gaol, and having the said *A. Q.* in the gaol
 last aforesaid, under his custody for the cause aforesaid, afterwards,
 to wit, on the same day and year last aforesaid, at *Lincoln* afore-
 said, the said *A. Q.* unlawfully and negligently did permit to go out
 of the said last-mentioned gaol, and at large to escape whithersoever Escape.
 he would, in great obstruction of justice, to the evil example of all
 others in the like case offending, and against the peace of our said
 lord the king, his crown and dignity.

Indictment against a gaoler for negligently permitting a prisoner,
 committed to his custody by virtue of a justice's warrant, to escape.
Cro. Cir. Aff. 331.

——— Against the turnkey of a common gaol for a misdemea-
 nor in aiding a prisoner, committed by virtue of a justice's warrant
 for petit larceny, to make his escape. *Ibid.* 333. *Vide* 16 Geo.
 II. ch. 31, and title *Prison*, hereafter.

——— Against a prisoner confined in a gaol for debt (by virtue
 of a writ issued out of *C. B.* and the sheriff's warrant to the gaoler)
 for attempting to break the gaol, in order to make his escape. *Cro.*
Cir. Aff. 336.

PRECEDENTS of INDICTMENTS.

- [* 322] * Indictment against a gaoler for voluntarily permitting a prisoner, convicted of felony at the assizes, (setting out the record of conviction) to escape. *Cro. Cir. Aff.* 338. *Vide* conclusion of title *Constable*, ante.

A negligent escape is, when the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued, and taken again before he hath lost the sight of him. Dalt. (edit. 1727) 510.

If a private person or a constable arrest a man for felony, and carry him to the common gaol, the gaoler is ^a bound to receive him; and (if the constable or person that delivers him acquaints the gaoler that it is for felony) it is at the peril of the gaoler if he lets him escape, though there is no mittimus in such case, but a notice ore tenus. 1 H. H. 595, 596.

It is also said that if the constable arrest a man for felony, and bring him to gaol, and the gaoler refuse to receive him, yet in law he is in the custody of the constable; and if he lets him go, he is chargeable in an escape. Ibid. 594.

Wherever a person is found guilty upon an indictment or presentment of a negligent escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence. 2 Haw. 136, 139. 1 H. H. 603, 604.

One negligent escape will not amount to a forfeiture of the gaoler's office, as one voluntary one will; yet if a gaoler suffer many negligent escapes, it is said, that he puts it in the power of the court to oust him of his office by its discretion. 2 Haw. 136.

- [* 323] * *It seems to be generally agreed, that a voluntary escape suffered by an officer amounts to the same kind of crime, and is punishable in the same degree, as the offence of which the party was guilty, and for which he was in custody, whether it be treason, felony, or trespass.* 2 Haw. 134.

But it is said, that no one is punishable as for felony for the voluntary escape of a felon, but the person only who is actually guilty of it; and therefore that the principal gaoler is only fineable for a voluntary escape suffered by his deputy; for that no one shall suffer capitally for the crime of another. 2 Haw. 135.

That every indictment for an escape, whether negligent or voluntary, must expressly shew, that the prisoner was actually in the defendant's custody for such a crime, and that he went at large; and if for a voluntary escape, that the defendant feloniously and voluntarily suffered him to go at large; and must set forth, not the felony in general, but the particular kind of felony; but it seems questionable, whether such certainty, as to the nature of the crime, be necessary in an indictment for a negligent escape; for that it is not material in this case, whether the person who escaped were guilty or not. 2 Haw. 132, 133.

EXTORTION.

Indictment against a coroner for extortion.

Gloucestershire. **T**HE jurors for our lord the king upon their oath present, That *W. N.* late of the parish of *S.* in the county of *Gloucester*, gent. (the said parish of *S.* being the

^a *Vide Brandling v. Kent*, 1 Term Rep. 57, and *Badkin v. Powell and others*, 4 T. R. 476, as to the civil process.

EXTORTION.

usual place of abode of him the said *W. N.*) on the ninth day of December, in the twenty-first year of the reign of our sovereign lord George the third, * king of *Great-Britain*, &c. then being one of the coroners of our said lord the king for the county of *Gloucester*, at the parish aforesaid, in the county aforesaid, by colour of his said office, unlawfully and unjustly did demand, extort, receive, and take of and from one *R. S.* the sum of fifty shillings, of lawful money of *Great-Britain*, for and as his fee for executing and doing of his office aforesaid, to wit, upon the view of the body of one *J. C.* late of *Stow in the Wold*, in the said county of *Gloucester*, glazier, who at the parish of *S.* aforesaid, in the county aforesaid, on the day and year above-mentioned, was slain by misadventure, and there lay dead, in contempt of our said lord the king and his laws, to the great damage of the said *R. S.* against the form of the statutes ^a in such case made and provided, and against the peace of our said lord the king, his crown and dignity. ^b

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By statute 3 *Edw. I. ch. 10*, *A coroner is to take no fee.*

But by stat. 3 *Hen. VII. ch. 1*, *Upon an inquisition taken upon view of the body murdered, he shall have thirteen shillings and four-pence of the goods of the murderer, and if he hath nothing, of the amercement of the township for the escape of the murderer.*

And by stat. 1 *Hen. VIII. ch. 7, § 1*, *The coroner shall have nothing where the inquisition is taken upon view of one slain by misadventure. Penalty forty shillings.*

* *Justices of assize, and justices of the peace within the county where any such default of the coroner be, have power and authority to enquire thereof, and determine the same as well by examination as presentment.* 1 *Hen. VIII. ch. 7, § 2.*

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But by stat. 25 *Geo. II. ch. 29, § 1*, *The fees are now settled, that the coroner be paid twenty shillings, and also nine-pence for every mile he is obliged to travel from his usual place of abode, to be paid out of the county rates.*

And by § 4, of the same statute, it is enacted, *That no coroner to whom any benefit is given by that act shall, by colour of his office, or upon any pretext whatsoever, take for his office doing, in case of the death of any person, any fee or reward, other than the said fee of thirteen shillings and four-pence, limited as is aforesaid by the said act made in the third year of the reign of king Henry the seventh, and other than the recompence limited and appointed by this statute, upon pain of being guilty of extortion.* Vide *Coroner*, ante, 276.

Indictment against the servant of a clerk of a market for extortion.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *E. R.* late of the parish of *St. Mary Matfellow*, otherwise *Whitechapel*, in the county of *Middlesex*, yeoman, on the fourth day of *June*, in the twenty-first year of the reign of our sovereign lord George the third, king of *Great Britain*, &c. at the parish aforesaid, in the county aforesaid, by colour of being servant and agent to *T. R.* and *C. P.* esquires, clerk of the

^a Vide *Doctrine of Indictments*, ante, 109, § 78.

^b If the coroner should travel from his usual place of abode to take an inquisition, the indictment ought to state how far he travelled, and shew that he took more than is allowed by 25 *Geo. II. ch. 29*, in order to bring the offence within the first and fourth sections of that act. Vide abstract thereof, post.

market

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Averment.

market of the household of our said lord the king, unlawfully, unjustly, and extorsively did demand, receive, and have of one *W. C.* the sum of fourteen-pence, of lawful money of *Great-Britain*, * for and as a fee for examining, marking, and sealing of five quart pots made of pewter, and two half-pint pots made of pewter; whereas in truth and in fact there was then no such fee due to the said *T. R.* and *C. P.* the said clerk of the market of the household of our said lord the king in that behalf, to the great damage and oppression of the said *W. C.* and against the peace of our said lord the king, his crown and dignity.

Indictment against a headborough for extortion.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *W. E.* late of the parish of *St. James, Clerkenwell*, in the county of *Middlesex*, tobaccoist, on the first day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. then being one of the headboroughs of the same parish, in the county aforesaid, at the parish of *St. Martin in the Fields*, in the county aforesaid, by colour of his said office, unlawfully, unjustly, and extorsively did exact, extort, receive, and have of and from one *F. J.* widow, the sum of five shillings, of lawful money of this realm, for a pretended fee of him the said *W. E.* for taking and arresting the said *F. J.* by virtue of a warrant of *T. R.* esq. (meaning *T. R.* esq. one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county), and for the obtaining and discharging of the same warrant, as the said *W. E.* did then alledge; whereas in truth and in fact no such fee was then due to the said *W. E.* in that * behalf, to the great damage of the said *F. J.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Averment.

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Indictment against a constable for extorting money of a person apprehended by him on a bench warrant, to let her go without carrying her before any justice of the peace.

Under colour of a warrant, &c.

did receive, &c.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. F.* late of the parish of *St. Paul, Covent-garden*, in the county of *Middlesex*, yeoman, on the fourth day of *June*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. then being one of the constables of the same parish, at the parish aforesaid, in the county aforesaid, did take and arrest one *N. L.* spinster, by colour of a certain warrant, commonly called a bench warrant, which he the said *A. F.* then and there had, to apprehend the said *N. L.* to answer to a certain trespass and assault, whereof the said *N.* then stood indicted, as the said *A. F.* then and there alledged and pretended, and the said *A. F.* her the said *N.* then and there had in his custody; and that the said *A. F.* afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, corruptly, deceitfully, and extorsively, for wicked gain sake, and contrary to the duty of his office, did extort, receive, and take of and from the said *N.* the sum of five shillings, of lawful money of *Great-Britain*, for discharging the said *N.* out of

E X T O R T I O N.

of the custody of him the said *A. F.* without conveying her before any justice of the peace for the said county, to answer to the said trespass and assault, whereof she was supposed * to stand indicted as
[* 328]

Indictment against a tipstaff to a judge of the court of King's Bench for extortion.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. L.* late of the parish of *St Dunstan* in the *West*, in the county of *Middlesex*, gent. on the second day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, unlawfully, unjustly, and extor-
Did receive,
sively did exact and receive of and from one *R. H.* two pieces of gold coin, of the proper coin of this kingdom, called guineas, of the value of forty-two shillings, under colour and pretence of being
under colour,
tipstaff to the right honourable *W.* earl of *M.* then chief justice of &c.
our said lord the king, assigned to hold pleas in the court of our lord the king, before the king himself, and under colour and pretence of a fee due to him the said *A.* for not carrying the said *R.* by virtue of a warrant under the hand and seal of the said *W.* earl of *M.* chief justice aforesaid, issued forth against the said *R. H.* to answer to an indictment then before found against the said *R. H.* at the session of the peace held for the county aforesaid, for an assault upon
Averment.
A. A. as the said *A. L.* then and there alledged to the said *R. H.* whereas in truth and in fact no such fee was then due to the said
[* 329]
A. L. in that behalf, to the great damage of the said *R. H.* to the evil example of all others in the * like case offending, and against the peace of our said lord the king, his crown and dignity.

Indictment against a Marshalsea court officer for extortion.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. T.* late of the parish of *St. Giles* in the *Fields*, in the county of *Middlesex*, yeoman, on the eleventh day of *April*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. (the said *A. T.* then being one of the bearers of the verge of the household of our said lord the king, and an officer and minister of the court * of our

* This is a court of record holden in *Southwark*, exercising a jurisdiction within (a) twelve miles of the king's palace, or where his ordinary residence is. *Bac. Abr.* 639. (a) *Vide Salk.* 439.

But in treating of this subject, Lord *Coke* says, that all inquisitions concerning any citizen of *London* shall be taken in *London*. 4 *Inst.* 130.

The jurisdiction of this court does not extend to trespasss *quare clausum fregit*, or any real or mixed action. 1 *Bac. Abr.* 632. *Vide* also 2 *Inst.* 548; and *Com Dig.* title *Courts* (F).

By 33 *Hen. VIII.* ch. 12, § 7, maliciously striking and shedding blood within the king's palace, is punishable by cutting off the right hand of the offender: (b) which statute very minutely describes the several officers of the servants of the household in and about such execution, from the serjeant of the wood-yard, who furnishes the chopping-block, to the serjeant farrier, who brings hot irons to sear the stump. (b) 4 *Black.* *Com.* 273, 274.

As to the boundaries of the verge and limits of the palace, &c. *vide* 2 *H.* 8, 9.

said

PRECEDENTS of INDICTMENTS.

Did extort, &c.

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After he had
arrested, &c.

Averment.

said lord the king of his palace of *Westminster*) at the parish aforesaid, in the county aforesaid, unlawfully, unjustly, and extorsively, and by colour of his said office, did extort, receive, and have of one *T. E.* the sum of eighteen shillings, of lawful money of *Great-Britain*, for the fee of him the said *A. T.* for * keeping the said *T. E.* at the house of him the said *A. T.* situate in the parish aforesaid, in the said county of *Middlesex*, and not conveying him the said *T. E.* to the prison of our said lord the king, called the *Marshalsea* in *Southwark*, in the county of *Surry*, after he the said *A. T.* had arrested the said *T. E.* by virtue of a certain writ of our said lord the king, called a *marshal's court* writ, issued out of the said court of our said lord the king, under the seal of the same court, bearing date the tenth day of the said month of *April*, in the year aforesaid, and returnable in the same court on the fourteenth day of *April* then next following, to answer *D. D.* of a plea of trespass on the case, to his damage of ninety-nine shillings, (as the said *A. T.* then and there did alledge;) whereas in truth and in fact no fee whatever to the said *A. T.* in that respect was then due or payable, to the great damage of the said *T. E.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

It is said that extortion, in a large sense, signifies any oppression under colour of right; but that, in a strict sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. 1 Haw. 170.

And it has been resolved, that a promise to pay them for the doing of a thing, which the law will not suffer them to take any thing for, is merely void. 1 Haw. 171.

And by the statute of the 3 *Edw. I. ch. 26*, (which is only in affirmance of the common law,) no sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth shall yield twice as much, and shall be punished at the king's pleasure.

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* *At the common law this offence is severely punishable at the king's suit, by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law doth give; for hereby the plaintiff shall recover his double damages.* 2 *Inst. 210.* 1 Haw. 171.

And by 31 *Eliz. ch. 5*, *Prosecutions for extortion may be laid in any county.*

See Lord Raymond, 148, 149, and 1 Stra. 74, for further information on this subject.

FORCEIBLE ENTRY.

Indictment for a forcible entry and detainer at common law.

The Liberty of St Alban, in the county of Hertford.

THE jurors for our lord the king upon their oath present, That *T. J.* late of the parish of *East-Barnet*, within the liberty of *St. Alban*, in the county of *Hertford*, gentleman, and *E. P.* late of the same, spinster, together with divers other evil-disposed persons and disturbers of the peace of our said lord the king (whose names to the jurors aforesaid are as yet unknown), on the thirtieth day of *June*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish

FORCIBLE ENTRY.

parish aforesaid, within the liberty aforesaid, in the county aforesaid, unlawfully and injuriously did enter into a certain barn and a certain orchard, then and there being in the possession of one *G. A.* (four cart-loads of hay, of the value of ten pounds, of the goods and chattels of the said *G. A.* then and there being in the same * barn); and that the said *T. J.* and *E. P.* together with the said other evil-disposed persons, then and there, with force and arms, unlawfully and injuriously did expel, amove, and put out the said *G. A.* from the possession of the said barn and orchard, and the said *G. A.* so as aforesaid, expelled, amoved, and put out from the possession of the said barn and orchard, then and there, with force and arms, unlawfully and injuriously did keep out, and still do keep out, and other wrongs to the said *G. A.* then and there did, to the great damage of the said *G. A.* and against the peace of our said lord the king, his crown and dignity.

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Indictment for a forcible entry and expelling out of possession, at common law.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *C. P.* late of the parish of *St. James*, within the liberty ^a of *Westminster*, in and for the county of *Middlesex*, yeoman, *T. C.* late of the same, apothecary, and divers other evil-disposed persons and disturbers of the peace of our said lord the king (to the jurors aforesaid as yet unknown), on the eighth day of *August*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, into one shop, one warehouse, and one stable, being parcel of the dwelling-house of *L. H.* widow, there situate, unlawfully and injuriously did enter (the said shop, warehouse, and stable then and there being in the possession of one *R. F.*), and him the said *R. F.* from the possession of the same premises unlawfully and injuriously did expel and * put out; and him the said *R. F.* so as aforesaid expelled and put out from the possession of the same premises, on the day and year above mentioned, and continually afterwards, until the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, did unlawfully and injuriously keep out, and still do keep out, to the great damage of the said *R. F.* and against the peace of our said lord the king, his crown and dignity.

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Indictment for a forcible entry and detainer, upon statute.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *E. C.* late of the parish of *Kensington*, in the county of *Middlesex*, gent. on the first day of *April*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. was possessed of a certain messuage, with the appurtenances, situate and being in *Church-lane*, in the parish of *Kensington* aforesaid, in the county aforesaid, for a certain term of years, then and still to come and unexpired, and being so possessed thereof, one *S. R.* late of the same parish of *Kensington*, in the said county of *Middlesex*, baker, afterwards, to wit, on the first day of *April*, in the year aforesaid, into the said messuage, with the appurtenances aforesaid, in *Church-lane*, in the parish

^a Vide "Practice of the General Quarter Session," *ante*, 31, 32, &c.

and

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and county aforesaid, with force and arms, and with strong hand, unlawfully did enter, and the said *E. C.* from the peaceably possession of the said messuage, with the appurtenances aforesaid, then and there, with force and arms, and with strong hand, unlawfully did expel and put out, and the said *E. C.* from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said *S. R.* him the said *E. C.* from * the aforesaid first day of *April*, in the year aforesaid, until the day of the taking of this inquisition, from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully, and injuriously then and there did keep out, and still doth keep out, to the great damage of the said *E. C.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

When one or more persons, furnished with unusual weapons, violently enter into the house or land of another, or use threatening words, and by that means gain the possession, or if they enter peaceably, and then forcibly put another out of his possession, &c. these are forcible entries, punishable by law. Vide Dalt. (edit. 1727) ch. 126.

If one enter the house of another, without his consent, although the door be open, yet this is a forcible entry, if he detains the possession. Ibid.

It is enacted by stat. 5 *Rich. II.* ch. 8^a, in the following words: *And also the king defendeth, That none from henceforth make any entry into any lands and tenements, but in case where entry is given by the law, and in such case, not with strong hand, nor with multitude of people, but only in peaceable and easy manner. And if any man from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by imprisonment of his body, and thereof ransomed at the king's will.*

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By the above statute no provision is made against forcible detainer, therefore it is enacted by stat. 15 *Rich. II.* ch. 2. *That the said statute, and all others made against forcible entries, &c. shall be fully executed; * and further, That at all times when such forcible entries shall be made, and complaint thereof cometh to the justices of the peace, or to any of them, the same justices or justice take sufficient power of the county, and go to the place where the force is made; and if they find any that hold such place forcibly, after such entry made, they shall be taken and put into the next gaol, there to abide, convicted, by the record of the same justices or justice, until they have made fine and ransom to the king. And that all the people of the county, as well the sheriff as others, shall be attendant upon the same justices, to go and assist the same justices to arrest such offenders, upon pain of imprisonment, and to make fine to the king. And in the same manner it shall be done of them that make such forcible entries in benefices, or offices of holy church.*

By stat. 8 *Hen. VI.* ch. 9, *When forcible entry is committed, justices of the peace are to view the place, and enquire of the force, by a jury summoned by the sheriff; and cause the tenements to be seized and restored, and imprison the offenders till they pay a fine, &c.*

^a By Harukins's edition of the Statutes, it appears to be ch. 8, and by Pickering's ch. 7.

FORESTALLERS, REGRATORS, and ENGROSSERS.

By stat. 31 Eliz. ch 11, *No restitution upon any indictment of forcible entry, or holding with force, shall be made to any person, if the person so indicted hath had the occupation, or been in quiet possession, for the space of three whole years together, next before the day of such indictment, so found, and his estate therein not ended; which the party indicted may alledge for stay of restitution, and restitution to stay till that be tried, if the other will deny or traverse the same: and if the same allegation be tried against the same person so indicted, he is to pay such costs and damages to the other party as shall be assessed by the judges or justices before whom the same shall be tried; the same costs and damages to be recovered and levied as is usual for costs and damages contained in judgments upon other actions.*

* If a man having good right to enter upon lands, doth it forcibly, he may be indicted. Dalt. (edit. 1727) ch. 129.

Where there is a forcible entry and detainer, there may be a restitution, but not for a forcible detainer. Vide 1 Haw. ch. 64.*

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FORESTALLERS, REGRATORS, and ENGROSSERS.

Indictment at common law for forestalling the market.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *W. B.* late of the parish of *Fryern-Barnet*, in the county of *Middlesex*, yeoman, on the eleventh day of *August*, in the twenty-second year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, did buy and cause to be bought of and from and one *T. H.* three hundred pounds weight of cheese, for the sum of three pounds fifteen shillings and sixpence, of lawful money of *Great-Britain*, as he the said *T. H.* then and there was coming towards *London*, to wit, to a certain market called *Leaden-ball Market*, in *London* aforesaid, to sell the said three hundred pounds weight of cheese, and before the same was brought into the said market where the same should be sold, in contempt of our said lord * the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

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Indictment at common law against a regrator.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *S. A.* late of the parish of *St Andrew, Holborn*, in the county of *Middlesex*, yeoman, on the first day of *March*, in the twenty-first year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, to wit, in a certain market there, called *Brook's Market*, did obtain and get into his hands and possession ten geese, thirty ducks, and eighteen drakes, of and from one *E. G.* for the sum of four pounds and nine shillings, of lawful money of *Great-Britain*, (the said geese, ducks, and drakes then being brought to the said market by the said *E. G.* to be sold;) and

* For further information on this subject, vide 2 Bac. Abr. 555; Dalt. (edit. 1727) ch. 44, 125, 126, 127, &c.; Gro. Car. 201; 2 Ld. Raym. 1036; 1 Bur. Just. (15th edit.) 209.

afterwards,

PRECEDENTS of INDICTMENTS.

afterwards, to wit, on the same first day of *March*, in the year aforesaid, he the said *S. A.* at the parish aforesaid, in the county aforesaid, in the said market there, called *Brook's Market*, unlawfully did regrate the said geese, ducks, and drakes, and sell the same again to one *W. S.* for the sum of five pounds, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

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* *Indictment against an ingrosser at common law.*

Shropshire. **T**HE jurors for our lord the king upon their oath present, That *H. M.* late of the parish of *Oswestry*, in the county of *Salop*, yeoman, on the ninth day of *December*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, did ingross and get into his hands, by buying of and from one *R. G.* fifty quarters of wheat, to the intent to sell the same again for lucre, gain, and profit, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

There have been several statutes made from time to time against these offences in general, and also especially with respect to particular species of goods according to their several circumstances; all of which, from the 5 & 6 Edw. VI. ch. 14, and others downwards, made for enforcing the same, are repealed by 12 Geo. III. ch. 71. But these offences still continue punishable upon indictment at the common law by fine and imprisonment.

And at the common law, all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such-like devices, are highly criminal, and punished by fine and imprisonment. 1 Haw. 234, 235.

[* 339]

*By the common law, a merchant bringing victuals into the realm may sell the same in gross; but no person * can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, without being liable to be indicted for the same. 3 Inst. 196.*

And the bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at common law, whether any part thereof be sold by the ingrosser or not. 1 Haw. 235.

Cre. Car. 231, 232.

And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf; perhaps for this reason, because by such means the market is in effect forestalled. Ibid.

By stat. 5 & 6 Edw. VI. ch. 14, These offences were particularly described; which statute, although now repealed as aforesaid, yet may be of use, as containing a parliamentary exposition of the respective terms, denoting the several particular offences; and is as follows:

§ 1. *Whosoever shall buy or cause to be bought any merchandize, victual, or any other thing whatsoever, coming by land or by water toward any market or fair, to be sold in the same, or coming toward any city, port, haven, creek, or road, from any parts beyond the sea, to be sold; or make any bargain, contract, or promise for the having or buying of the same, or any part thereof, so coming as is aforesaid, before*

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before the said merchandize, viſual, or other thing ſhall be in the market, fair, city, port, haven, creek, or road, ready to be ſold; or ſhall make any motion by word, letter, meſſage, or otherwiſe, to any perſon, for enhancing of the price or dearer ſelling of any thing or things above mentioned; or elſe diſſuade, move, or ſtir any perſon coming to the market or fair to abſtain or forbear to bring or convey any of the things above rehearſed to any market, fair, city, port, haven, creek, or road, to be ſold as aforeſaid, ſhall be deemed a foreſtaller.

§ 2. And whoſoever ſhall by any means regrate, obtain, or get into his hands or poſſeſſion, in a fair or * market, any corn, wine, fiſh, butter, cheeſe, candles, tallow, ſheep, lambs, calves, ſwine, pigs, geefe, capons, hens, chickens, pigeons, conies, or other dead viſual whatſoever, that ſhall be brought to any fair or market to be ſold, and do ſell the ſame again in any fair or market holden or kept in the ſame place, or in any other fair or market within four miles thereof, ſhall be deemed a regrator.

[* 340]

§ 3. Whoſoever ſhall ingroſs or get into his hands by buying, contracting, or promiſe-taking, other than by demiſe, grant, or leaſe of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead viſuals whatſoever, to the intent to ſell the ſame again, ſhall be deemed an unlawful ingroſſer.

See 1 Ld. Raymond, 475.

F O R G E R Y.

1. Indiſtment at common law for forging a writ of fieri facias, and thereby taking a perſon's goods in execution.

Salop. **T**HE jurors for our lord the king upon their oath preſent, That *L. T.* late of the pariſh of *Whitchurch*, in the county of *Salop*, gentleman, falſely, unlawfully, and wickedly deviſing, contriving, and intending one *A. K.* late of the ſame pariſh and county, yeoman, unjuſtly, maliciously, and injuriouſly to aggrieve, oppreſs, and impoveriſh, on the eighth day of *June*, in the twenty-fiſt year of the reign of our ſovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at *Whitchurch* * aforeſaid, in the county aforeſaid, of his wicked mind, invention, and imagination, unlawfully, knowingly, ſubtilly, and falſely did forge and counterfeit a certain writing, engroſſed on parchment, in form and to the likeneſs and ſimilitude of a writ of our lord the king of *fieri facias*, and purporting to be a writ of our ſaid lord the king of *fieri facias*, iſſuing out of the court of our ſaid lord the king of *Common Pleas*, at *Weſtminſter*, in the county of *Middleſex*, and directed to the then ſheriff of *Salop*, by which it was commanded to the ſame ſheriff, that he ſhould cauſe to be made, of the goods and chattels of the ſaid *A. K.* as well a certain debt of forty pounds, recovered by the ſaid *L. T.* in the ſaid court of our ſaid lord the king of *Common Pleas* againſt the ſaid *A. K.* as thirteen pounds ſixteen ſhillings and eight-pence, for damages which the ſaid *L. T.* had ſuſtained on occaſion of detaining that debt; and that the ſame ſheriff ſhould have that money before the juſtices of our ſaid lord the king of *Common Pleas* aforeſaid, at *Weſtminſter* aforeſaid, from the day of the *Holy Trinity*, in three weeks then next following, to render to the aforeſaid *L. T.* for the debt and damages aforeſaid. And the jurors aforeſaid, upon their oath aforeſaid, do further preſent, That the ſaid *L. T.* of his wicked mind, invention, and imagination, afterwards,

First count, for forging and publishing, &c.

[* 341]
Did forge, &c.

Writ.

PRECEDENTS of INDICTMENTS.

wards, to wit, on the twenty-ninth day of the said month of *June*, in the twenty-first year aforesaid, at *Whitchurch* aforesaid, in the said county of *Salop*, the said false, forged, and counterfeit writing, falsely forged, purporting to be a writ of *fieri facias*, subtilly, falsely, knowingly, and deceitfully did pronounce and publish; and then and there, to wit, on the same twenty-ninth day of *June*, in the twenty-first year aforesaid, at *Whitchurch* aforesaid, in the county of *Salop* aforesaid, subtilly, falsely, knowingly, and deceitfully, as a true writ of our * said lord the king of *fieri facias*, did cause to be delivered to the then sheriff of *Salop*, for execution to be made thereof; and afterwards, to wit, on the thirtieth day of the same month of *June*, at *Whitchurch* aforesaid, in the county of *Salop* aforesaid, did cause to be seized and taken divers goods and chattels of the said *A. K.* by pretence of that writ, to the great damage and oppression of the said *A. K.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *L. T.* on the twenty-ninth day of *June*, in the twenty-first year aforesaid, with force and arms, at *Whitchurch* aforesaid, in the county of *Salop* aforesaid, of his wicked mind, invention, and imagination, a certain false, forged, and counterfeit writing, engrossed on parchment, falsely forged, in form and to the likeness and similitude of a writ of our said lord the king of *fieri facias*, issuing out of the said court of our said lord the king of *Common Pleas*, and directed to the then sheriff of *Salop*, by which it was commanded to the same sheriff, that he should cause to be made, of the goods and chattels of the said *A. K.* as well a certain debt of forty pounds, recovered by the said *L. T.* in the said court of our said lord the king of *Common Pleas*, against the said *A. K.* as thirteen pounds sixteen shillings and eight-pence, for damages which the said *L.* had sustained on occasion of detaining that debt, and that the same sheriff should have that money before the justices of our said lord the king of *Common Pleas* aforesaid, at *Westminster* aforesaid, from the day of the *Holy Trinity*, in three weeks then next following, to render to the aforesaid *L. T.* * for the debt and damages aforesaid (he the said *L. T.* then, to wit, on the same twenty-ninth day of *June*, and before, well knowing that false, forged, and counterfeit writ to be falsely forged and counterfeited), unlawfully, knowingly, subtilly, and deceitfully, as a true writ of our said lord the king of *fieri facias*, did pronounce and publish, and that writ, as a true writ of our said lord the king of *fieri facias*, afterwards, to wit, on the said thirtieth day of *June*, in the twenty-first year aforesaid, at *Whitchurch* aforesaid, in the county of *Salop* aforesaid, subtilly, falsely, knowingly, and deceitfully, did cause to be delivered to the then sheriff of *Salop*, for execution to be made thereof; and afterwards, to wit, on the same thirtieth day of *June*, in the year aforesaid, did cause to be seized and taken divers goods and chattels of the said *A. K.* by virtue of that writ, to the great damage and oppression of the said *A. K.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Did publish, &c.

[* 342]
and cause to be delivered to the sheriff, &c.

Second count, for publishing, &c.

Writ.

[* 343]
He the said *L. T.* well knowing, &c.

Did publish, &c.

Delivery to the sheriff, &c.

The defendant was convicted on this indictment at the assizes holden at Shrewsbury, and was fined one hundred pounds, and ordered to be put in the pillory. ^a

^a So expressed in the fifth edition.

* 2. *Indictment for forging an indenture of bargain and sale, and a release of another's freehold estate in right of his wife, upon stat.* [* 344]
 5 Eliz. ch. 14.

Middlesex **T**HE jurors for our lord the king upon their oath pre- First count,
 sent, That *J. G.* gent. and *E.* his wife, in right of stating part of
 her the said *E.* on the twenty-first day of *September*, in the first year the indenture of
 of the reign of our sovereign lord *George* the third, king of *Great-* bargain and sale
Britain, &c. and long before, ^a *were*, and continually from thence for a year.
 hitherto have been, and still are, seized in their demesne as of fee
 of and in certain messuages, lands, and tenements, called *Jarwick*,
 with their appurtenances, in the parish of *Clackton*, in the county of
Essex, and that *J. C.* late of *London*, merchant, being a person of That *J. C.* be-
 evil name and fame, and of a wicked disposition, and contriving ing, &c.
 and intending the said *J. G.* and *E.* his wife unjustly to aggrieve, With intent, &c.
 with an intent that the state of freehold of them the said *J.* and
E. G. of and in the said lands, tenements, and hereditaments,
 called *Jarwick*, in the parish of *Clackton*, in the county of *Essex*
 aforesaid, and the right, title, and interest of the said *J.* and *E.* of
 and in the same, should be molested and troubled, afterwards, to
 wit, on the said twenty-first day of *September*, in the said first year
 of the reign of our said lord the king, at the parish of *St. Dunstan*
 in the *West*, in the county of *Middlesex*, upon his own head and
 imagination^b, with * force and arms, &c. wittingly, subtilly, and [* 345]
 falsely did forge and make, and cause to be forged and made, a cer- Did forge, &c.
 tain false writing, sealed, purporting to be sealed and delivered by
 the said *J. G.* and *E.* and in itself purporting to be an indenture of
 bargain and sale for one year, and to bear date the said twenty-first
 day of *September*, in the said first year of our said lord the now king,
 and supposed to be made between them the said *J.* and *E.* by the
 names of *J. G.* of the city of *Gloucester*, gentleman, and *E.* his
 wife, of the one part, and the aforesaid *J.* by the name of *J. C.* of
London, merchant, of the other part: in which the said indenture
 is mentioned and supposed in ^c substance (among other things), Part of the in-
 "That for and in consideration of the sum of five shillings, of denture forged.
 lawful money of *Great Britain*, to the said *J. G.* and *E.* his wife
 in hand paid by the said *J. C.* at or before the sealing and delivery
 of the same indenture, the receipt whereof the said *J. G.* and *E.*
 his wife thereby are mentioned to have acknowledged, they the said
J. G. and *E.* his wife had granted, bargained, and sold, and by the
 same indenture have granted, bargained, and sold, unto the said
J. C. all that parst, commonly called or known by the name of
Jarwick Park, in the parish of *Clackton*, in the county of *Essex*,
 being about eight miles in circumference, and containing by estima-
 tion four thousand acres or thereabouts, or more or less, or by
 whatever other name or names, quantity or quantities, or otherwise,
 the said thereby bargained and sold premises, or any part thereof,

^a In an action of covenant by the husband of tenant in fee, he must declare on a seisin in fee of himself and his wife, in the right of his wife; and if he state that he is seized in his demesne as of freehold, in right of his wife, it will be bad on special demurrer. *Polyblank v. Hawkins*, Dougl. (1st edit.) 314.

^b The words of the statute.

^c See the manner of setting out the substance of false matter in an indictment, in *The King v. Aylett*, 1 Term Rep. 65. As to part of a libel, see the sixth count of the information against *Horns*, *Cro. Cir. Aff.* 117.

were,

[* 346]

To have and to hold, &c.

Yielding, &c.

to the intent, &c.

Second count, stating part of the release. That the said *J. C.* contriving, &c.

[* 347]

Did forge, &c.

Part of the indenture of release.

were, or was, or had been reputed, called, known, or distinguished; together with the trees, woods, underwoods, deer, * commons, ways, rights, privileges, royalties, members, hereditaments, emoluments, and appurtenances whatsoever to the same belonging, or in any ways appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, to have and to hold the said park, trees, woods, underwoods, deer, hereditaments, and appurtenances thereby bargained and sold, or meant, mentioned, or intended so to be, and every part thereof, unto the said *J. C.* his executors, administrators, and assigns, from the day next before the day of the date of the same indenture, for and during, and until the full end and term of one whole year, from thence next following, and fully to be compleat and ended, yielding and paying therefore, upon the last day of the said term thereby granted, the rent of one pepper-corn, if the same should be lawfully demanded," to the intent and purpose that by virtue thereof, and of the statute for transferring uses into possession, the said *J. C.* might be in actual possession of all and singular the said premises thereby granted, bargained, and sold, or meant or intended so to be, and thereby might be enabled to receive and take the grant and release, reversion and inheritance thereof, to the use of himself, his heirs and assigns, for ever: to the great damage of the said *J. G.* and *E.* his wife, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. C.* contriving and intending the said *J. G.* and *E.* his wife, as aforesaid, unjustly to aggrieve, and with the said intent, that the state of freehold of them the said *J.* and *E.* in right of the said *E.* of and in the said lands, tenements, and hereditaments, and the right, title, and interest of them the said *J.* and *E.* of and in the same, should be molested and * troubled, on the said *twenty-first* day of *September*, in the first year of the reign of our said lord the king, at the parish of *St. Dunstan* in the *West* aforesaid, in the county of *Middlesex* aforesaid, upon his own head and imagination, with force and arms, &c. wittingly, subtilly, and falsely did forge and make, and cause to be forged and made, one other false writing, sealed, in itself purporting to be an indenture of release, and to bear date on the *twenty-second*^a day of *September*, in the said first year of the reign of our said lord the now king, and supposed to be made between them the said *J. G.* and *E.* his wife, by the names of *J. G.* of the city of *Gloucester*, gent. and *E.* his wife, of the one part, and the said *J. C.* by the name of *J. C.* of *London*, merchant, of the other part, in which said indenture of release is mentioned and supposed in substance (among other things), "That for and in consideration of the sum of four thousand and five hundred pounds, of lawful money of *Great-Britain*, to the said *J. G.* and *E.* his wife in hand paid by the said *J. C.* at and before the sealing and delivery of the said indenture of release, the receipt and payment whereof the said *J. G.* and *E.* his wife, by the same indenture of release, are mentioned to have acknowledged, and of the same and every part thereof to have acquitted, exonerated, and discharged the said *J. C.* his heirs, executors, administrators, and assigns, and every of them, thereby, they the said *J. G.* and *E.* his wife had granted, bargained, sold,

^a As the fact may be.

aliened, released, and confirmed, to the said *J. C.* as by the same indenture is supposed (in his actual possession then being by virtue of a bargain and sale to him thereof made and granted by * the said *J. G.* and *E.* his wife, in consideration of five shillings, by indenture bearing date the day next before the day of the date of the same indenture of release, for one whole year, to begin from the day next before the day of the date of the said indenture of bargain and sale, and mentioned to be executed before the supposed sealing and delivery of the same indenture of release, and by force of the statute for transferring uses into possession), to his heirs and assigns for ever, all that park, commonly called or known by the name of *Jawick Park*, in the parish of *Clackton*, in the county of *Essex*, being about eight miles in circumference, and containing by estimation four thousand acres, or thereabouts, or more or less, or by whatsoever name or names, quantity or quantities, the said thereby granted and released premises, or any part thereof, were, was, or had been reputed, called, known, or distinguished, together with the trees, woods, underwoods, deer, commons, ways, rights, privileges, royalties, members, hereditaments, emoluments, and appurtenances whatsoever to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, use, trust, possession, freehold, inheritance, property, claim, and demand whatsoever, as well in law as in equity, of them the said *J. G.* and *E.* his wife, of, in, to, or out of the said park and premises, and every part and parcel thereof; and also all deeds, evidences, muniments, escripts, and writings, belonging, touching, or in any wise concerning the same lands, hereditaments, and premises, or any part thereof, to have and to hold the said park, trees, woods, underwoods, deer, hereditaments, and appurtenances, thereby granted and released, or meant, mentioned, or intended so to be, and every part thereof, to the said *J. C.* his heirs and * assigns, and to the only proper use, benefit, and behoof of the said *J. C.* and his heirs and assigns," to the great damage of the said *J. G.* and *E.* his wife, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and also against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. C.* being a person of evil name and fame, and of a wicked disposition, and contriving and intending the said *J. G.* gentleman, and *E.* his wife, unjustly to aggrieve, and with an intent that the state of freehold of them the said *J.* and *E. G.* in right of the said *E.* of and in certain lands, tenements, and hereditaments, called *Jawick*, in the parish of *Clackton*, herein before mentioned, in the county of *Essex*, and the right, title, and interest of the said *J.* and *E.* of and in the same, should be molested and troubled, on the said twenty-first day of *September*, in the said first year of the reign of our said lord the king, at the said parish of *St. Dunstan* in the *West*, in the county of *Middlesex* aforesaid, with force and arms, &c. falsely did * pronounce and publish one false forged writing, sealed, purporting to be sealed and delivered by the said *J. G.* and *E.* his wife, as a true writing, be the said *J. C.* knowing that writing to be a false, forged, and counterfeited writing, the same writing in itself purporting to be an indenture of bargain and sale for one year, and to bear date on the

All that park,
&c.

To have and to
hold, &c.

To the great
damage, &c.

Third count,
for publishing
the indenture of
bargain and sale
for a year.

Did publish, &c.

* The word of the statute.

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[* 350]

Part of the bargain and sale.

To have and to hold, &c.

Yielding. &c.

[* 351]
To the intent,
&c.

He the said J.
C. well knowing,
&c.

Fourth count,
for publishing
the indenture of
release.

twenty-first day of *September*, in the said first year of the reign of our said lord the now king, and to be made between the said J. and E. by the names of J. G. of the city of *Gloucester*, gentleman, and E. his wife, of the one part, and the said J. C. by the name of J. C. * of *London*, merchant, of the other part; in which same last-mentioned indenture of bargain and sale is mentioned and supposed in substance (among other things),- "That for and in consideration of the sum of five shillings, of lawful money of *Great-Britain*, to the said J. G. and E. his wife in hand paid by the said J. C. at or before the sealing and delivery of the same indenture, the receipt whereof the said J. G. and E. his wife thereby are mentioned to have acknowledged, that the said J. G. and E. his wife had granted, bargained, and sold, and by the same indenture have granted, bargained, and sold, to the said J. C. all that park commonly called or known by the name of *Jawick Park*, in the parish of *Clackson*, in the county of *Essex*, being about eight miles in circumference, and containing by estimation four thousand acres, or thereabouts, or more or less, or by whatever other name or names, quantity or quantities, or otherwise, the said thereby bargained and sold premises, or any part thereof, were, or was, or had been reputed, called, known, or distinguished, together with the trees, woods, underwoods, deer, commons, ways, rights, privileges, royalties, members, hereditaments, emoluments, and appurtenances whatsoever to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, to have and to hold the said park, trees, woods, underwoods, deer, hereditaments, and appurtenances, thereby bargained and sold, or meant, mentioned, or intended so to be, and every part thereof, to the said J. C. his executors, administrators, and assigns, from the day next before the day of the date of the same indenture of bargain and sale last mentioned, for and during, and until the full end and term of one whole year, from thence next ensuing, and fully to be compleat and ended, yielding and paying therefore, upon the last * day of the said term thereby granted, the rent of one pepper-corn, if the same should be lawfully demanded," to the intent and purpose that by virtue thereof, and of the statute for transferring uses into possession, the said J. C. might be in actual possession of all and singular the said premises thereby granted, bargained, and sold, or meant or intended so to be, and thereby might be enabled to accept and take the grant and release, reversion, and inheritance thereof, to the use of himself, his heirs and assigns, for ever (he the said J. C. at the said time that he the said J. as aforesaid did publish and pronounce the said false forged writing as a true writing, well knowing that writing to be falsely forged), to the great damage of the said J. G. and E. his wife, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and also against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said J. C. contriving and intending the said J. G. and E. his wife, as aforesaid, unjustly to aggrieve, and with the aforesaid intent that the said state of freehold of them the said J. and E. in right of the said E. of and in the lands, tenements, and hereditaments last mentioned, and the right, title, and interest of the said J. and E. in the same, should be molested and troubled, on the said twenty-first day of *September*, in the said first year of the reign of our said lord the king, at the parish of *St. Dunstan* in the *West* aforesaid, in the county of *Middlesex*

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Middlesex afore said, with force and arms, &c. falsely did pronounce and publish one false forged writing, sealed, by the said *J. C.* Did publish, &c. knowing that writing to be a false, forged, and counterfeited writing, the same writing in itself purporting to be an indenture of release, and to bear date the twenty-second day of *September*, in the said * first year of the reign of our said lord the king, and to be made between them the said *J. G.* and *E.* his wife, by the names of [* 352]

J. G. of the city of *Gloucester*, gentleman, and *E.* his wife, of the one part, and the said *J. C.* by the name of *J. C.* of *London*, merchant, of the other part, in which the said last-mentioned indenture of release is mentioned and supposed in substance (among other things), "That for and in consideration of the sum of four thousand and five hundred pounds, of lawful money of *Great-Britain*, to the said *J. G.* and *E.* his wife in hand paid by the said *J. C.* at and before the sealing and delivery of the same indenture of release last mentioned, the receipt and payment whereof the said *J. G.* and *E.* his wife, by the same indenture of release, are mentioned to have acknowledged, and of the same, and every part thereof, to have acquitted, exonerated, and discharged the said *J. C.* his heirs, executors, administrators, and assigns, and every of them, thereby, they the said *J. G.* and *E.* his wife had granted, bargained, sold, aliened, released, and confirmed, and by the same indenture have granted, bargained, sold, aliened, released, and confirmed, to the said *J. C.* as by the same indenture is supposed (in his actual possession then being, by virtue of a bargain and sale to him thereof granted by the said *J. G.* and *E.* his wife, in consideration of five shillings, by indenture bearing date the day next before the day of the date of the said last-mentioned indenture of release, for one whole year, to begin from the day next before the day of the date of the same last-mentioned indenture of bargain and sale, and mentioned to be executed before the supposed sealing and delivery of the last-mentioned indenture of release, and by force of the statute for transferring All that park, uses into possession), and to his heirs and assigns for ever, all that &c. [* 353]

park, commonly called or known by the name of * *Jawick Park*, in the parish of *Clackton*, in the county of *Essex*, being above eight miles in circumference, and containing by estimation four thousand acres, or thereabouts, or more or less, or by whatever other name or names, quantity or quantities, the said thereby granted and released premises, or any part thereof, were, was, or had been reputed, called, known, or distinguished, together with the trees, woods, underwoods, deer, commons, ways, rights, privileges, royalties, members, hereditaments, emoluments, and appurtenances whatsoever to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, use, trust, possession, freehold, inheritance, property, claim, and demand whatsoever, as well in law as equity, of them the said *J. G.* and *E.* his wife, of, in, to, or out of the said park and premises, and every part or parcel thereof; and also all deeds, evidences, muniments, escripts, and writings, touching or in any wise concerning the same lands, hereditaments, and premises, or any part thereof, to have and to hold the said park, trees, woods, underwoods, deer, hereditaments, and appurtenances thereby granted and released, or meant, mentioned, or intended so to be, and of every part thereof, to the said *J. C.* and his heirs and assigns, and to the only proper use, benefit, and behoof of the said *J. C.* and his heirs and assigns. (he the said *J. C.* at the said time that he the said *J. C.* pronounced and published the said last-

To have and to hold, &c.

He the said *J. C.* well knowing, &c.

PRECEDENTS of INDICTMENTS.

[* 354]

last-mentioned false and forged writing, in form aforesaid, as a true writing, well knowing that writing to be falsely forged), to the great damage of the said J. G. and E. his wife, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and also * against the peace of our said lord the king, his crown and dignity.

Upon the above indictment the defendant C. was tried in his majesty's court of King's Bench at Westminster, before the lord chief justice R. and was convicted thereof. Some time afterwards the defendant, by his counsel, moved in arrest of judgment, when several exceptions were taken to the indictment, but the court overruled them, and proceeded to give judgment against him, pursuant to the directions of the stat. 5 Eliz. ch. 14; which sentence was executed at Charing-Cross, by the common hangman, and the defendant was imprisoned in the King's Bench prison during his life.

Forgery is an offence at common law, and an offence also by statute.

As to forgery at the common law:

1. In what cases the making or altering of a writing shall be said to be so far false and fraudulent as to amount to forgery.
2. That a man may be guilty of forgery in respect of such writings.

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As to the first particular, it is said to be possible for a man knowingly to make a deed in his own name, and also to sign and seal it himself, which yet, in judgment of law, may be no better than a forgery; as if a man makes a feoffment of certain lands to A. T. and afterwards makes a feoffment of the same lands to N. H. of a prior date, in which case he is said to be guilty of forgery, because he knowingly falsifies the date, in order to defraud his own feoffee, by making a second conveyance, which, at the time, he had no power to make. Also it is said, that his crime would have been less, if by his conveyance he had passed only an equitable interest for good consideration, and had afterwards, by such a subsequent ante-dated conveyance, endeavoured to avoid it. Also, in many other cases, a writing may * be said to be forged where neither the hand or seal of any one is forged; as where one, being directed to draw up a will for a sick person, doth insert some legacies therein of his own head; or where one, finding another's name at the bottom of a letter, at a distance from the other writing, causes the letter to be cut off, and a general release to be written above the name, and then takes off the seal, and fixes it under the release; or where one inserts into an indictment the names of those against whom, in truth, it was not found; or where one makes any fraudulent alteration of the form of a true deed in a material part of it, as by making a lease of the manor of Dale appear to be a lease of the manor of Sale, by changing the letter D into S; or by making a bond for five hundred pounds, expressed in figures, seem to have been made for five thousand, by adding a new cypher. But Sir Edward Coke seems to say, that a deed so altered may more properly be called a false than forged writing, because it is not forged in the name of another, nor his seal nor hand counterfeited. But Hawkins said, he saw no good reason why such an alteration of a deed should not as properly be called a forgery as the entire making of a new deed in another's name; for, in both cases, not only the fraud and villainy are the same, but also a man's hand and seal are falsely made use of, to testify

testify his assent to an instrument which, after such an alteration, is no more his deed than a stranger's. The notion of forgery doth not seem so much to consist in the counterfeiting a man's hand and seal, which may often be done innocently, but in endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is no way privy to, or, at least, to make a man's own act appear to have been done at a time when it was not done; and, by force of such a falsity, to give it an operation which in truth and justice it ought not to have. 1 Haw. 182, 183.

* He who writes a deed in another's name, and seals it in his presence, and by his command, is not guilty of forgery, because the law looks on this as the other's own sealing. 1 Haw. 183. Salk.

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375. He is not punishable for forgery who razeth the word pounds out of a bond made to himself, and putteth in marks, because there is no appearance of a fraudulent design to cheat another, and the alteration is prejudicial to none but to him who makes it, whose security for his money is wholly avoided by it; yet it is said, that it would be forgery, if, by the circumstances of the case, it should any way appear to have been done with an eye of gaining an advantage to the party himself, or of prejudicing a third person; also it is holden, that such an alteration, without these circumstances, is a misdemeanor, though it be no forgery. 1 Haw. 183.

It hath been resolved, that a man shall not be adjudged guilty of forgery for writing a will for another, without any directions from him, who becomes non compos before it is brought to him; for it is not the bare writing an instrument in another's name without his privacy, but the giving it a false appearance of having been executed by him, which makes a man guilty of forgery. Ibid.

Regularly a man cannot commit an act of forgery by a bare non-feasance, as by omitting a legacy out of a will which he is directed to draw for another; yet it hath been holden by some, even in this case, that if the omission of a bequest to one cause a material alteration in the limitation of a bequest to another, to pass a present estate, which otherwise would have passed a remainder only, he, who makes such an omission, is guilty of forgery. Ibid. 183, 184.

It seemeth no way material whether a forged instrument be made in such a manner, that if it were, in truth, * such as it is counterfeited for, it would be of validity, or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of A. B. as being a member of parliament, who in truth, at the time, was not a member, is as much a crime as if he were. 1 Haw. 184.

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To shew that a man may be guilty of forgery at common law, in respect of any of the above-mentioned writings, there seemeth to be no doubt but that one may be guilty of this crime by the common law, in falsely and fraudulently making or altering any manner of record, or any other authentick matter of a public nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, or a licence from the barons of the exchequer to compound a debt. Ibid. 182, 184.

As to forgery by statute law: By 5 Eliz. ch. 14, § 2, it is enacted, That if any person or persons, upon his or their own head and imagination, or by false conspiracy and fraud with others, shall wiltingly, subtilly, and falsely forge or make, or subtilly cause or

wittingly

(a) Proviso in
§ 15.

[* 358]

wittingly assent to be forged or made, any false deed, charter, or writing sealed, court roll, or the will of any person or persons, in writing, to the intent that the estate of freehold or inheritance of any person or persons, of, in, or to any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person or persons, of, in, or to the same, or any of them, shall or may be molested, troubled, defeated, recovered, or charged, or shall pronounce, publish, or shew forth in evidence, any such false and forged deed, charter, writing, court roll, or will as true, knowing the same to be false and forged, as is aforesaid, to the intent above remembered, (a) "except, being an attorney, lawyer, or counsellor, he shall for his client plead, shew forth, or give in evidence such false and forged deed, &c. to the forging whereof he was not party or privy;" and shall be thereof convicted, either upon action or actions * of forgery or false deeds, to be founded upon the said statute. at the suit of the party grieved, or otherwise, according to the order and due course of the laws of this realm, &c. shall pay unto the party grieved his double costs and damages, to be found or assessed in that court where such conviction shall be, and also shall be set upon the pillory in some open market, or other open place, and there have both his ears cut off, and also his nostrils slit and cut, and seared with a hot iron, &c. and shall forfeit to the king the whole issues and profits of his lands and tenements, and suffer perpetual imprisonment, &c.

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§ 3. And it is further enacted, That if any person or persons, upon his or their own head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly, and falsely forge or make, or wittingly, subtilly, and falsely cause or assent to be made and forged, any false charter, deed, or writing, to the intent that any person or persons shall or may have or claim any estate or interest for term of years, of, in, or to any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee-simple, fee-tail, or for term of life, lives, or years, or shall, as is aforesaid, forge, make, or cause or assent to be made or forged, any obligation or bill obligatory, or any acquittance, release, or other discharge of any debt, accompt, action, suit, demand, or other things personal; or shall pronounce, publish, or give in evidence (except as is before excepted) any such false forged charter, deed, writing, obligation, bill obligatory, acquittance, release, or discharge, as true, knowing the same to be false and forged, and shall be thereof convicted by any of the ways or means aforesaid, he shall pay unto the party grieved his double costs and damages, to be found and assessed in such court where the said conviction shall be had, and shall be also set upon the pillory in some open market-town, or other open place, and there have one * of his ears cut off, and also shall suffer imprisonment for one year, &c.

§ 7, 8. And it is further enacted, That if any person or persons, being convicted or condemned of any of the offences aforesaid, by any of the ways or means above limited, shall, after any such his or their conviction or condemnation, ^a estoons, commit or perpetrate any of the said offences, in form aforesaid, that then every such second offence shall be adjudged felony without benefit of clergy, saving to all persons, other than the said offenders, and such as claim to their uses, all such rights, &c. which they shall have to

^a The word of the statute.

any the hereditaments of any such person, so as is aforesaid convicted or attainted, at any time before, &c. saving also the dower of such offender's wife, and the right of his heir.

§ 10. And it is further enacted, That all justices of oyer and terminer, and justices of assize, shall have power to enquire of, hear, and determine the offences aforesaid.

§ 9, 12, 16 But it is provided, That this act, or any thing therein contained, shall not extend to any ordinary, or his commissary, &c. for putting their seal of office to any will to be exhibited unto them, not knowing the same to be false or forged, or for writing of the said will, or proving of the same; nor to any proctor, &c. of any ecclesiastical court, for the writing, setting forth, or pleading of any proxy made according to the ecclesiastical law, &c. for the appearance of any person being cited to appear in such court; nor to any archdeacon or official, for putting their authentick seal to the said proxy or proxies; nor to any ecclesiastical judge, for admitting of the same; nor to any person who shall plead or shew forth any deed or writing, exemplified under the great seal of England, or under the seal of any other authentick court of this realm; nor to any person who shall cause any seal of any court to be set to any * such deed, charter, or writing enrolled, not knowing the same to be false or forged.

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Vide stat. 2 Geo. II. ch. 25; 31 Geo. II. ch. 22, § 78; 7 Geo. II. ch. 22; & 18 Geo. III. ch. 18, post.

3. Indictment for forging a bond signed with a mark, and publishing the same, with intent to defraud the executors of the person supposed to have made it.

Nottingham. **T**HE jurors for our lord the king upon their oath present, That *B. W.* late of Nottingham, in the

county of Nottingham, labourer, and *W. M.* late of the same, labourer, after the twenty-ninth day of June, in the year of our Lord one thousand seven hundred and twenty-nine, to wit, on the eighth day of November, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, feloniously did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, a certain bond, purporting to be signed by one *J. L.* (then deceased) in his life-time, with the mark * of him the said *J. L.* and to be sealed and delivered by the said *J. L.* in his life-time, the tenor of which said bond is as followeth, (here recite the bond:) The mark of *J. † L.* Sealed and delivered in the presence of the mark of *B. † W. W. M.* with an intent to defraud *W. B.* and *T. W.* executors of the last will and testament of the said *J. L.* of the sum of two hundred and fifty pounds, against the form of the * statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the aforesaid *B. W.* and *W. M.* afterwards, to wit, on the said eighth day of November, in the said twenty-first year of the reign of our said lord the king, at Nottingham aforesaid, in the county aforesaid, a certain false, forged, and counterfeit bond, purporting to have been signed by the said *J. L.* (then deceased) in

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Second count, for publishing.

a That forgery may be committed by making a mark in the name of another person, see *Elizabeth Dun's case*, Le. Cr. Ca. 61.

his life-time with his mark, and to have been sealed and delivered by the said J. in his life-time, with force and arms, feloniously did utter and publish as a true bond; which said bond, so as aforesaid falsely made and counterfeited, is in the words and figures following, (*recite the bond again throughout:*) with an intent to defraud the said W. B. and T. W. executors of the last will and testament of the said J. L. of the sum of two hundred and fifty pounds, (the said B. M. and W. M. at the time of publishing the said false, forged, and counterfeited bond, by them as aforesaid, then and there well knowing, and each of them well knowing, the said bond to have been false, forged, and counterfeited,) against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. ^a

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By stat. 2 Geo. II. ch. 25, made perpetual by stat. 9 Geo. II. ch. 18, it is enacted, *That if any person, from and after the twenty-ninth day of June, in the year of our Lord one thousand seven hundred and twenty-nine, shall falsely make, forge, or counterfeit, or * cause or procure to be falsely made, forged, or counterfeited, or willingly act or assist in the false making, forging, or counterfeiting, any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of any money, indorsement or assignment of any bill of exchange or promissory note for payment of any money, or any acquittance or receipt, either for money or goods, with intention to defraud any person whatsoever, or shall utter or publish, as true, any false, forged, or counterfeited deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note for payment of money, acquittance or receipt, either for money or goods, with intention to defraud any person, knowing the same to be false, forged, or counterfeited, then every such person being thereof lawfully convicted, according to the due course of law, shall be deemed guilty of felony, and suffer death as a felon, without benefit of clergy.*

Nothing in this act extends to Scotland. ^b

Nor no attainder for any offence therein made felony shall make or work any corruption of blood, loss of dower, or disherison of heirs.

31 Geo. II. ch. 22, § 78, provides against similar offences committed with an intention to defraud any corporation.

4. *Indictment for forging and publishing an acceptance on a supposed forged bill of exchange.*

First count, for forging with intent to defraud the governor, &c. of the bank, and the supposed acceptor.

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LONDON. **T**HE jurors for our lord the king upon their oath presented, That M. S. late of London, labourer, on the fifteenth day of September, in the twenty-first year of the reign of * our sovereign lord George the third, king of Great-Britain, &c. at the parish of St. Sepulchre, in the ward of Farringdon Without, in London aforesaid, had in his custody a certain bill of exchange, purporting to be signed in the name of J. J. and to bear date at Stockholm, in parts beyond the seas, the thirtieth day of August, in

^a Indictment against Daniel Perreau, for forging and uttering a bond with intention to defraud two different persons. *Cro. Cir. Aff.* 419.

Against Dr. Dodd, for forging a bond, and a receipt for the money supposed to have been secured thereby. *Ibid.* 422.

^b See *Dick's case*, *Le. Cr. Ca.* 66.

the year of our Lord one thousand seven hundred and eighty-one, directed to *P. T.* merchant, in *London*, for the payment of four hundred and fifty pounds sterling, to *J. G.* or order, two months after sight of the same bill; and that the said *M. S.* contriving and intending the *(a) governor and company of the bank of England*, and also the said *P. T.* of *London*, merchant, feloniously to deceive and defraud, after the twenty-fourth day of *June*, one thousand seven hundred and thirty-four, to wit, on the fourteenth day of *October*, in the said twenty-first year of the reign of our said lord the king, with force and arms, at the parish aforesaid, in the ward aforesaid, in *London* aforesaid, wickedly, unlawfully, and feloniously did falsely make, forge, and counterfeit, and did cause to be falsely made, forged, and counterfeited, on the same bill of exchange, an acceptance in writing of him the said *P. T.* in the words and figures following, to wit, *Accepted 14 October, 1781, payable at Messieurs K. and J. P. T.* to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *M. S.* contriving and intending the *(b) governor and company of the bank of England*, and also the said *P. T.* of *London*, merchant, feloniously to deceive and defraud, on the said fourteenth day of *October*, in the said twenty-first year of the reign of our said lord the king, with force and arms, at the parish * aforesaid, in the ward aforesaid, in *London* aforesaid, the said writing falsely made and counterfeited, purporting to be the acceptance of a certain bill of exchange, and purporting to be signed in the name of *J. J.* and to bear date at *Stockholm* aforesaid, the said thirtieth day of *August*, in the year one thousand seven hundred and eighty-one aforesaid, and to be directed to *P. T.* merchant, in *London*, for the payment of four hundred and fifty pounds sterling, to *G.* or order, two months after sight of the said bill, wickedly, unlawfully, fraudulently, and feloniously did publish, and cause to be published, for and as a true writing and acceptance of the said *P. T.* which said false, forged, and counterfeit writing is in the words and figures following, to wit, *Accepted 14 October, 1781, payable at Messieurs K. and J. P. T.* (he the said *M. S.* at the time of publishing the said false and counterfeit writing there by him, in form aforesaid, well knowing the said writing to have been falsely forged and counterfeited as aforesaid), to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

(a) See the observations on this precedent hereafter.

Second count, for uttering with a like intention. (b) Vide observations.

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It seems worthy of consideration, Whether an indictment for the latter offence should not contain four counts, viz. two stating an intention to defraud the "*corporation*, called the governor and company of the bank of *England*," on 18 *Geo. III.* ch. 18, (as the words of the statute are, "with an intention to defraud any *corporation* whatsoever," it being evident that the governor, &c. are a *corporation* under the authority of 5 & 6 *W. & M.* * ch 20, § 20), and two other counts, with an intention to defraud the supposed acceptor, on 7 *Geo. II.* ch. 22.

Observations as to the governor, &c. being a *corporation*.

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* As to a *partnership* description in an indictment, vide *Lavell's case*, *Le. Cr. Ca.* 239.

PRECEDENTS of INDICTMENTS.

It is true that the statute gives the company a *public name*, and says they may sue and implead, and be sued and impleaded, answer and be answered, by that name in courts of record, &c. yet, as they are a *corporation*, there does not, at present, seem any good reason why they should not be so called in an indictment, according to the words of the said act of his present majesty. See the indictment in *Cro. Cir. Aff* 280, stating an intention to defraud the *corporation*, called the *London Assurance*, &c.

5. *Indictment against a clerk of the South-Sea Company, for altering a warrant, or order, of such company, for payment of an annuity, by adding a letter and cyphers which increased the sums.*

First count, for forging with intention to defraud the governor and company.

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That *H. P.* clerk to the governor, &c.

having in his custody a warrant, &c. directed to the cashier, &c.

The warrant.

He the said *H. P.*

[* 367]

THE jurors for our lord the king upon their oath present, That one *D. H.* on the first day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. and long before, was, and still is, one of the clerks of the ^a governor and company of merchants of *Great-Britain* trading to the *South Seas* and other parts of *America*, and for encouraging the fishery; and then and long before was, and hath ever since been, entrusted and employed by the governor and company aforesaid to make out and sign warrants, or orders, for the payment of money payable by the * said governor and company, to wit, at *London*, that is to say, at the parish of *St. Mary Outwich*, in the ward of *Broad-street*, in *London* aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That *H. P.* late of *London*, gentleman, on the eleventh day of *February*, in the twenty-first year aforesaid, and long before, and afterwards, was a clerk of the governor and company aforesaid, commonly called a pay-clerk, and entrusted and employed by the said governor and company to pay money for them, and on their behalf, upon and in discharge of warrants, or orders, for the payment of money payable by the said governor and company, to wit, at *London* aforesaid, that is to say, in the parish and ward aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *H. P.* on the said eleventh day of *February*, in the twenty-first year aforesaid, having in his custody and possession a certain warrant, or order, partly printed and partly written, signed by and under the hand of the said *D. H.* and directed to *R. R.* esquire, then and upon the said first day of *January*, in the twenty-first year aforesaid, and long before, being cashier to the governor and company aforesaid, for the payment of the sum of eight pounds to one *W. D.* therein named, for half a year's annuity on the sum of four hundred pounds interest or share in the new joint stock of *South-Sea* annuities therein mentioned, and which said warrant, or order, was then in the words, figures, cyphers, and letters following, that is to say, C No. 1214, *New South-Sea annuities at 4l. per cent. 23d. R. R. esq; pay to W. D. (the warrant set forth at large);* and on the back of which said warrant, or order, the said *W. D.* had signed his name as followeth: *Wm. D.* he the said *H. P.* afterwards, that is to say, on the said eleventh day * of *February*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, that is to say, at the parish of *St. Mary Outwich*, in the

^a By stat. 9 *Ann.* ch. 21, § 25, it is enacted, "that it shall and may be lawful for her majesty, her heirs and successors, by letters patent, to incorporate this company:" therefore see the preceding observations.

F O R G E R Y.

ward of *Broad-street*, in *London* aforesaid, the said warrant, or order, feloniously did alter, and cause to be altered, by falsely making, forging, and adding the letter *T* to the word *eight*, before written, &c. ten in the said warrant, or order, with the said letter *T*, so falsely made and forged, and added as aforesaid, became eighty pounds; and also, by falsely making, forging, and adding the cypher *o* to the figure and cyphers *400*, before also written in the said warrant, or order, which figure and cyphers, with the letter *L* next preceding them, did, before such last-mentioned forgery and addition, import and signify four hundred pounds, but by reason and means of such last-mentioned forgery and addition did, together with the said cypher, so falsely made, forged, and added as aforesaid, become, import and signify four thousand pounds; and also, by falsely making, forging, and adding the cypher *o* to the figure *8*, before written also in the said warrant, or order, and which said last-mentioned figure, with the letter *L* preceding it, did, before such last-mentioned forgery and addition, import and signify eight pounds, but by reason and means of such last-mentioned forgery and addition did, together with the said last-mentioned cypher, so falsely made, forged, and added, become, import, and signify eighty pounds, with intention to defraud the ^a governor and company aforesaid of the sum of seventy-two ^b pounds, of lawful money of *Great-Britain*, against the peace of our said lord the king, his crown and dignity, and also against the form ^{*} of the statute in such case made and provided.

with intention, &c.

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And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *H. P.* on the said eleventh day of *February*, in the twenty-first year of his said present majesty's reign, having in his custody and possession a certain false, forged, altered, and counterfeited warrant, or order, partly written and partly printed, purporting to be a warrant, or order, under the hand of the said *D. H.* and directed to the said *R. R.* esquire, for the payment of the sum of eighty pounds to one *W. D.* therein named, for half a year's annuity on the sum of four thousand pounds interest or share in the new joint stock of *South-Sea* annuities therein mentioned; which said false, forged, altered, and counterfeited warrant, or order, is in the words, figures, cyphers, and letters following, that is to say, C No. 1214. (*the warrant set forth at length*); and on the back of which said false, forged, altered, and counterfeited warrant, or order, is signed the name *Wm. D.* as a discharge, under the hand of the said *W. D.* in the said false, forged, altered, and counterfeited warrant named, of the said false, forged, altered, and counterfeited warrant, or order, he the said *H. P.* afterwards, to wit, on the said eleventh day of *February*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, that is to say, at the parish of *St. Mary Outwich*, in the said ward of *Broad-street*, in *London* aforesaid, with intention to defraud the ^c governor and company of merchants of *Great-Britain* trading to the *South Seas* and other parts of *America*, and for encouraging the fishery, of another sum of seventy-two pounds, the said false, forged, altered, and counterfeited warrant, or order, did feloniously utter and publish as a true ^{*} warrant, or order, under the hand of the said *D. H.* for payment of the sum of eighty pounds to the said *W. D.* he the said *W. P.*

Second count, for uttering and publishing, with a like intention.

Warrant.

With intention, &c.

did utter, &c.

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^a Vide Observations under *Prec. 4*, ante.

^b As the fact may be.

^c As before.

PRECEDENTS of INDICTMENTS.

Substance of the third count.

Fourth count for altering and forging, &c. stating the warrant to be a receipt, with a like intention.

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Feloniously did alter, &c. and forge the letter T, &c.

and the cypher o did make, forge, &c.

Another cypher forged and added,

with intention to defraud, &c.

at the time he so as aforesaid uttered and published the said false, forged, altered, and counterfeited warrant, or order, well knowing the same to be false, forged, altered, and counterfeited, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided [A third count, for feloniously uttering and publishing the said forged warrant, or order, with intention to defraud divers persons unknown.] And the jurors aforesaid, upon their oath aforesaid, do further present, That the said H. P. on the said eleventh day of February, in the twenty-first year of the reign of our said lord the king, at London aforesaid, in the parish and ward aforesaid, having in his custody a certain paper, partly printed and partly written, and which was then in the words, figures, cyphers, and letters following, that is to say, C No. 1214, &c. and on the back of which said paper, partly printed and partly written, the aforesaid W. D. therein named, has indorsed and signed his name as followeth, Wm. D. and which said paper, partly printed and partly written, together with the said indorsement, in the form aforesaid, did then purport to be, and was, a receipt, acquittance, and discharge under the hand of the said W. D. for the said sum of eight pounds, in the said paper, partly printed and partly written, mentioned, he the said H. P. afterwards, that is to say, on the said eleventh day of February, in the twenty-first year aforesaid, with force and arms, at the parish and ward aforesaid, in London aforesaid, * the said paper, partly printed and partly written, with the indorsement thereon, so purporting to be such receipt, acquittance, and discharge as aforesaid, feloniously did alter and cause to be altered, and the letter T feloniously and falsely did make, forge, counterfeit, and add to the word eight, before written in the said paper, partly printed and partly written, so purporting, with the said indorsement to such receipt, acquittance, and discharge as aforesaid, whereby the words eight pounds, before written in the said paper, partly printed and partly written, so purporting, with the said indorsement, to be such receipt, acquittance, and discharge as aforesaid, with the said letter T, so falsely made, forged, and added thereto, became eighty pounds; and also the cypher o feloniously and falsely did make, forge, counterfeit, and add to the figure and cyphers 400, before also written in the said paper, partly printed and partly written, so purporting, with the indorsement aforesaid, to be such receipt, acquittance, and discharge as aforesaid, whereby the said figure and cyphers 400, with the printed letter L next preceding them, did, together with the said cypher so falsely made, forged, and added thereto as aforesaid, become, import, and signify four thousand pounds; and also the cypher o feloniously and falsely did make, forge, counterfeit, and add to the figure 8, before written also in the said paper, partly printed and partly written, so purporting, with the indorsement aforesaid, to be such receipt, acquittance, and discharge as aforesaid, whereby the figure 8, with the printed letter L also next preceding it, did, together with the said last-mentioned cypher, so falsely made, forged, and added thereto as aforesaid, become, import, and signify eighty pounds, with intention to defraud the governor and company of merchants of Great-Britain

* The warrant having been passed and cancelled as a true one, it was thought advisable to consider it as an acquittance, or receipt; which occasioned this and the two subsequent counts. Vide 2 Geo. II. ch. 25, & 31 Geo. II. ch. 22, § 78.

trading

trading to the *South Seas* and other parts of *America*, and * for encouraging the fishery, against the peace of our said lord the king, his crown and dignity, and also against the form of the statutes in such case made and provided. [A fifth count for feloniously uttering and publishing such receipt or acquittance, knowing that the same had been altered, forged, and counterfeited, by persons unknown, with intent to defraud the said governor and company, mutatis mutandis as the fourth count; and a sixth count, mutatis mutandis as the fifth count, with intent to defraud persons unknown.] ^a

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Substance of fifth and sixth counts.

By stat. 7 Geo. II. ch. 22, it is enacted, That if any person, from and after the twenty-fourth day of June, one thousand seven hundred and thirty-four, shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly act or assist in the false making, altering, forging, or counterfeiting, any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money, or delivery of goods, with intention to defraud any person whatsoever, or shall utter, or publish as true, any false, altered, forged, * or counterfeited acceptance of any bill of exchange, or accountable receipt for any note, bill, or other security for payment of money, or warrant or order for payment of money or delivery of goods, with intention to defraud any person, knowing the same to be false, altered, forged, or counterfeited; then every such person, being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy.

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And by stat. 18 Geo. III. ch. 18, it is enacted, That if any person shall be guilty of any of the offences above mentioned, with intent to defraud any corporation whatsoever, he shall be deemed guilty of felony, without benefit of clergy, and this without any saving of the corruption of blood, or disherison of heirs.

It is made felony without benefit of clergy to forge bank notes, exchequer bills or orders, by the several statutes relating to those securities. ^a

6. Indictment for felony, in counterfeiting and forging a stamp resembling the stamp used by the king's officers for marking and stamping hides and skins, and pieces of hides and skins, &c.

Pembrokeshire. **T**HE jurors for our lord the king upon their oath present, That in pursuance of and according to the form of the statute in such case made and provided, a certain stamp, on the fifth day of *September*, in the twenty-first year of the

First count, for forging a stamp to resemble, &c.

^a The fourth count of this indictment, as appears by the fifth edition, concluded contrary to the form of the statutes, which has been permitted to remain so, the Editor deeming it too much presumption in him to alter any material part of an indictment founded upon so serious a branch of the criminal law as that of forgery; but he submits to the judgment and candour of the profession, whether it will not be more regular to conclude contrary to the form of the statute only upon which an indictment is meant to be framed, viz. 2 Geo. II. ch. 25, as to individuals, or 31 Geo. II. ch. 22, § 78, which is upon the same principle in aid of corporations, but in the purview of it wholly independent of the former. See the manner of setting out receipts under the 2d and 7th of Geo. II. and of course the 31 Geo. II. and 18 Geo. III. *Cro. Cir. Aff.* 281, 282. See also the indictment for forging a receipt of the Sun-fire-office corporation, same book, 274.

^b See the table to the statutes, *Cro. Cir. Aff.* 538, 539, 540.

PRECEDENTS of INDICTMENTS.

[* 373]

That T. C.

did counterfeit
and forge, &c.

Second count,
for counterfeit-
ing and resem-
bling the im-
pression upon
hides, &c. with
intent to de-
fraud the king.

[* 374]

In and upon se-
veral hides, &c.

did counterfeit,
&c.

Third count,
similar to the
second, stating
that he did de-
fraud, &c.

reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish of *Narbeth*, in the county of *Pembroke*, was made, provided, and appointed for the marking and stamping of hides and skins, and of pieces of hides and skins, and of vellum and parchment, * tanned, tawed, dressed, or made within *England* or *Wales*, or town of *Berwick upon Tweed*, to denote the charging of the duties by the statutes in such case made and provided, payable to our said lord the king, for and in respect thereof, which said stamp, on the said fifth day of *September*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, was used for the purpose aforesaid; and that one *T. C.* late of the parish aforesaid, in the county aforesaid, labourer, afterwards, and after the making of the statute in that case made and provided, to wit, on the said fifth day of *September*, in the twenty-first year aforesaid, at the parish aforesaid, in the county aforesaid, with force and arms, feloniously did counterfeit and forge a certain stamp to resemble the said stamp so as aforesaid made, provided, and appointed, and then and there used, in pursuance of and according to the form of the statute in such case made and provided, with intent thereby to defraud our said lord the king of the duties aforesaid, in contempt of our said lord the king and his laws, against the peace of our said lord the king, his crown and dignity, and contrary to the form of the ^b statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present, That in pursuance of and according to the form of the statute in such case made and provided, a certain stamp, on the thirtieth day of *July*, in the year of our Lord one * thousand seven hundred and seventy-nine, at the parish of *Narbeth* aforesaid, in the county of *Pembroke* aforesaid, was made, provided, and appointed for the marking and stamping of hides and skins, and of pieces of hides and skins, and of vellum and parchment, tanned, tawed, dressed, or made within *England* or *Wales*, or town of *Berwick upon Tweed*, to denote the charging of the duties by the statutes in such case made and provided, payable to our said lord the king, for and in respect thereof, which said last-mentioned stamp, from the day and year last aforesaid, until the twentieth day of *August*, in the year of our Lord one thousand seven hundred and eighty-one, at the parish aforesaid, in the county aforesaid, was used for the purposes last aforesaid; and that the aforesaid *T. C.* after the making of the statute in such case made and provided, to wit, at divers times, and in and upon divers days, within the time last aforesaid, at the parish of *Narbeth* aforesaid, in the county of *Pembroke* aforesaid, with force and arms, in and upon several hides, and in and upon several skins, and in and upon several pieces of hides, and in and upon several pieces of skins, respectively tanned within *Wales*, the impression of the said last-mentioned stamp feloniously did counterfeit and resemble, with intent thereby to defraud our said lord the king of the duties last aforesaid, contrary to the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do fur-

^a See 5 Geo. I. ch. 2, § 9.

^b As *Wales* is not mentioned in the statute of *Anne* hereafter abstracted, and as the 5th of *George* enacts "that the offender shall be subject and liable to the like pains and penalties as are expressed in the former," Q. if the indictment should not conclude contrary to the form of the statutes? Vide *Dingley v. Moore*, Cro. Eliz. 750, and the *Doctrine of Indictments*, ante, III, § 86, 87, 88. Vide 20 Geo. II. ch. 42, § 3; 1 Black. Com. 99.

ther present, That in pursuance of and according to the form of the statute in such case made and provided, a certain stamp, on the said thirtieth day of *July*, in the year of our Lord one thousand seven hundred and seventy-nine, and long before, at the parish of *Narbeth* aforesaid, in the county of * *Pembroke* aforesaid, was made, provided, and appointed for the marking and stamping of hides and skins, and of pieces of hides and skins, and of vellum and parchment, tanned, tawed, dressed, or made within *England* or *Wales*, or town of *Berwick upon Tweed*, to denote the charging of the duties by the statutes in such case made and provided, payable to our said lord the king, for and in respect thereof, which said last-mentioned stamp, from the day and year aforesaid, until the twentieth day of *April*, in the year of our Lord one thousand seven hundred and eighty-one, at the parish aforesaid, in the county aforesaid, was used for the purposes last aforesaid; and that the aforesaid *T. C.* after the making of the statute in such case made and provided, to wit, at divers times, and in and upon divers days, within the time last aforesaid, at the parish of *Narbeth* aforesaid, in the county of *Pembroke* aforesaid, with force and arms, in and upon several hides, and in and upon several skins, and in and upon several pieces of hides, and in and upon several pieces of skins, respectively tanned within *Wales*, the impression of the said last-mentioned stamp feloniously did counterfeit and resemble; and that the said *T. C.* did thereby then and there defraud our said lord the king of the duties last aforesaid, contrary to the form of the *statute* in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath

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Fourth count, for uttering and selling, &c. with a counterfeit impression thereon.

aforesaid, do further present, That in pursuance of and according to the form of the statute in such case made and provided, a certain stamp, on the said thirtieth day of *July*, in the year of our Lord one thousand seven hundred and seventy-nine, and long before, at the parish of *Narbeth* aforesaid, in the county of *Pembroke* aforesaid, was made, provided, and appointed for * the marking and stamping of hides and skins, and of pieces of hides and skins, and of vellum and parchment, tanned, tawed, dressed, or made within *England* or *Wales*, or town of *Berwick upon Tweed*, to denote the charging of the duties by the statutes in such case made and provided, payable to our said lord the king, for and in respect thereof, which said last-mentioned stamp, from the day and year last aforesaid, until the twentieth day of *April*, in the year of our Lord one thousand seven hundred and eighty-one, at the parish aforesaid, in the county aforesaid, was used for the purposes last aforesaid; and that the aforesaid *T. C.* after the making of the statute in such case made and provided, to wit, at divers times, and in and upon divers days, within the time last aforesaid, at the parish aforesaid, in the county aforesaid, several hides and skins, and several pieces of hides, and several pieces of skins, respectively tanned within *Wales*, and marked and stamped with a counterfeit and forged impression thereon, resembling the impression of the said last-mentioned stamp, so as is last aforesaid made, provided, and appointed, and then and there used, in pursuance of and according to the form of the statute in such case made and provided, to certain persons, to the jurors aforesaid as yet unknown, with force and arms, feloniously did utter and sell, (the same *T. C.* then and there well knowing the said mark or impression, so as aforesaid marked and stamped in and upon the said several hides and skins, and pieces of hides and skins, so as aforesaid

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Several hides, &c. with a counterfeit impression, &c.

did utter and sell, &c.

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said uttered and sold, to be forged and counterfeited,) in contempt of our said lord the king and his laws, against the peace of our said lord the king, his crown and dignity, and contrary to the form of the statute in such case made and provided.

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* By stat. 9 Ann. ch. 11, § 44, *The commissioners of the customs shall provide marks of the same kind with which hides, &c. shall be marked, and shall cause the said marks to be distributed amongst the officers of the customs, with which all the hides, &c. tanned, &c. in Great-Britain, upon the charging of the duties shall be marked; and if any person shall forge any mark made in pursuance of this act, or shall counterfeit the impression of the same upon any hide, &c. to defraud her majesty, her heirs, &c. or shall utter or sell any hide, &c. with such counterfeit mark, knowing the same to be counterfeited, being thereof convicted, shall suffer death as in cases of felony, without benefit of clergy.*^a

7. Indictment for forging and publishing a bill of exchange, and the acceptance and indorsement thereof, on 2 Geo. II. ch. 25, and 7 Geo. II. ch. 22.

First count, for forging the bill, with intention to defraud J. V. &c. 2 Geo. II.

did falsely forge, &c.

Purport of the bill.

[* 378]
(a) Vide bottom note, ante, 364.

THE jurors for our lord the king upon their oath present, That J. H. late of London, yeoman, on the fourth day of September, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. with force and arms, at London, that is to say, at the parish of St. Mary Woolnoth, in the ward of Langbourn, in London aforesaid, feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and did willingly act and assist in the false making, forging, and counterfeiting, a certain bill of exchange, commonly called an inland bill of exchange, purporting to have been drawn by one * E. N. and to be directed to P. S. and J. R. of London, merchants, by the names and description of (a) Messrs. S. and Co. Queen-street, requiring them to pay Mr. J. R. or his order, the sum of twenty-five pounds, twenty-one days after the date of the same bill, and to place the same sum of money to the accounts of the said E. N. as per advice from him the said E. N. which said bill of exchange, so falsely made, forged, and counterfeited, is as follows, that is to say,

Bill set out.

No. 170. £. 25.

Bristol, 13th August, 1781.

Twenty-one days after date please to pay Mr. J. R. or order, the sum of twenty-five pounds, and place it to my accounts, as per advice from

Your most humble servant,

To Messrs. S. and Co.
Queen-street.

E. N.

Second count, for uttering with the like intention. 2 Geo. II.

with intention to defraud J. V. esq. Sir R. G. knt. and T. H. against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said J. H. afterwards, to wit, on the said fourth

^a Extended to Wales, the town of Berwick upon Tweed, and Scotland, by 5 Geo. I. ch. 2, § 9; which likewise gives power to the commissioners to make new stamps.

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day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, to wit, in the parish and ward aforesaid, feloniously did utter and publish as true a certain false, forged, and counterfeited bill of exchange, commonly called an inland bill of true exchange, purporting to have been drawn by the aforesaid *E. N.* Purport. and to be directed to the above-named *P. S.* and *J. R.* by the names and description of Messrs. *S.* and Co. *Queen-street*, requiring them to pay Mr. *J. R.* or his order, the sum of twenty-five pounds, twenty-one days after the date * of the same bill, and to place it to the accounts of the aforesaid *E. N.* as per advice from him the said *E. N.* which said last-mentioned false, forged, and counterfeited bill of exchange is as follows, that is to say, [*set forth the bill as before,*] with intention to defraud the aforesaid *J. V.* Sir *R. G.* and *J. H.* (he the said *J. H.* at the said time when he so uttered and published the said last-mentioned bill of exchange, then and there well knowing the same to be false, forged, and counterfeited), Well knowing, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* on the said fourth day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, to wit, at the parish and ward aforesaid, feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false making, forging, and counterfeiting, a certain other bill of exchange, commonly called an inland bill of exchange, purporting to have been drawn by the aforesaid *E. N.* and to be directed to the above-named *P. S.* and *J. R.* by the names and description of Messrs. *S.* and Co. *Queen-street*, requiring them to pay Mr. *J. R.* or order, the sum of twenty-five pounds, twenty-one days after the date of the same bill, and to place it to the accounts of the aforesaid *E. N.* as per advice from him the said *E. N.* which said last-mentioned false, forged, and counterfeited bill of exchange is as follows, that is to say, [*set forth the bill as before,*] with intention to defraud the aforesaid *P. S.* and *J. R.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and * dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* afterwards, that is to say, on the said fourth day of *September*, in the year aforesaid, with force and arms, at *London* aforesaid, that is to say, at the parish and ward aforesaid, feloniously did utter and publish as true a certain other false, forged, and counterfeited bill of exchange, commonly called an inland bill of exchange, purporting to have been drawn by the said *E. N.* above named, and to be directed to the aforesaid *P. S.* and *J. R.* by the names and description of Messrs. *S.* and Co. *Queen-street*, requiring them to pay Mr. *J. R.* or order, the sum of twenty five pounds, twenty-one days after the date of the same bill, and to place it to the accounts of the aforesaid *E. N.* as per advice from him the said *E. N.* which said last-mentioned false, forged, and counterfeited bill of exchange is as follows, that is to say, [*set forth the bill as before,*] with intention to defraud the aforesaid *P. S.* and *J. R.* (he the said *J. H.* at the same time when he so uttered and published the same last-mentioned bill of exchange, then and there well knowing the same to be false, forged, and counterfeited), against the form of the statute in such case made and provided, and against the peace of our said lord the king, his

[* 379]

Bill.

Third count,
for forging with
intent to de-
fraud the
drawees.
2 Geo. II.

Purport.

Bill.

[* 380]

Fourth count,
for uttering
with the like
intention.
2 Geo. II.

Purport.

Bill.

Well knowing,
&c.

PRECEDENTS of INDICTMENTS.

Fifth count, for forging an indorsement, with intention to defraud *J. V. &c.*

2 Geo. II.

Upon a certain other bill, subscribed, &c.

[* 381]

feloniously did counterfeit

an indorsement in the name of the payee.

Sixth count, for uttering an indorsement, with the like intention. 2 Geo. II.

Substance of the bill.

[* 382]

Seventh count, for forging an indorsement, with intention to defraud the drawees.

2 Geo. II.

his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* afterwards, to wit, on the said fourth day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, to wit, at the parish and ward aforesaid, upon a certain other bill of exchange, commonly called an inland bill of exchange, subscribed with the name *E. N.* bearing date at *Bristol* the thirteenth day of *August*, one thousand seven hundred and eighty-one, directed to the above-named *P. S.* and *J. R.* by the names and * description of Messrs. *S.* and Co. *Queen-street*, by which said last-mentioned bill the said *E. N.* required the said *P. S.* and *J. R.* to pay Mr. *J. R.* or his order, the sum of twenty-five pounds, twenty-one days after the date of the said last-mentioned bill, and to place it to the accounts of the aforesaid *E. N.* as *per* advice from him the said *E. N.* feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false making, forging, and counterfeiting, an indorsement of the said last mentioned bill, in the name of the aforesaid ^a *J. R.* to whom the same money last-mentioned was made payable by the said bill, purporting to be an assignment of the same bill by and under the hand of the said *J. R.* with intention to defraud the aforesaid *J. V.* Sir *R. G.* and *T. H.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* afterwards, to wit, on the said fourth day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, to wit, at the parish and ward aforesaid, feloniously did utter and publish as true an indorsement of a certain bill of exchange, commonly called an inland bill of exchange, with the name *J. R.* signed and subscribed to the same bill, bearing date at *Bristol* the thirteenth day of *August*, one thousand seven hundred and eighty-one, directed to the above-named *P. S.* and *J. R.* by the names and description of Messrs. *S.* and Co. *Queen-street*, by which said last-mentioned bill the said *E. N.* required the said *P. S.* and *J. R.* to pay * Mr. *J. R.* or his order, twenty-five pounds, twenty-one days after the date of the same bill, and to place it to the accounts of the aforesaid *E. N.* as *per* advice from him the said *E. N.* which said false, forged, and counterfeit indorsement purported to be an assignment of the said last-mentioned bill of exchange by and under the hand of the said *J. R.* to whom the said last-mentioned sum of money was made payable by the same bill, with intention to defraud the aforesaid *J. V.* Sir *R. G.* and *T. H.* (he the said *J. H.* at the said time when he so as aforesaid uttered and published the said last-mentioned indorsement of the same last-mentioned bill of exchange, then and there well knowing the same indorsement to be false, forged, and counterfeited), against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* afterwards, to wit, on the said fourth day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, to wit, at the parish and ward aforesaid, upon a certain other bill of exchange, commonly called an inland bill of

^a It is felony to indorse a false name on a bill or note, though such supposed indorser never existed. *Bolland's case*, *Le. Cro. Ca.* 83.

exchange,

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exchange, subscribed with the name of *E. N.* bearing date at *Bristol* the thirteenth day of *August*, one thousand seven hundred and eighty-one, directed to the above-named *P. S.* and *J. R.* by the names and description of Messrs. *S.* and Co. *Queen-street*, by which said last-mentioned bill the said *E. N.* required the said *P. S.* and *J. R.* to pay Mr. *J. R.* or his order, the sum of twenty-five pounds, twenty-one days after the date of the said last-mentioned bill, and to place it to the accounts of the aforesaid *E. N.* as *per* advice from him the said *E. N.* feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely * made, forged, and counterfeited, and willingly act and assist in the false making, forging, and counterfeiting, an indorsement of the said last-mentioned bill of exchange, in the name of the said *J. R.* to whom the said sum of twenty-five pounds, contained in the same bill, was made payable by the said bill, purporting to be an assignment of the same last-mentioned bill, by and under the hand of the said *J. R.* with intention to defraud the aforesaid *P. S.* and *J. R.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* afterwards, to wit, on the said fourth day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, to wit, at the parish and ward aforesaid, feloniously did utter and publish as true a certain other indorsement of another bill of exchange, commonly called an inland bill of exchange, with the name of *J. R.* signed and subscribed to the same bill, bearing date at *Bristol* the thirteenth day of *August*, in the year one thousand seven hundred and eighty-one, directed to the aforesaid *P. S.* and *J. R.* by the names and description of Messrs. *S.* and Co. *Queen-street*, by which said last-mentioned bill the said *E. N.* required the said *P. S.* and *J. R.* to pay Mr. *J. R.* or his order, the sum of twenty-five pounds, twenty-one days after the date of the same bill, and to place the same to the accounts of him the said *E. N.* as *per* advice from him the said *E. N.* which said false, forged, and counterfeit indorsement, purporting to be an assignment of the said last-mentioned bill of exchange, by and under the hand of the said *J. R.* to whom the said last-mentioned twenty-five pounds was by the same bill made payable, with intention to defraud the * aforesaid *P. S.* and *J. R.* (he the said *J. H.* at the time when he so as aforesaid uttered and published the said last-mentioned indorsement of the said bill of exchange last above mentioned, then and there well knowing the same to be false, forged, and counterfeited), against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* on the said fourth day of *September*, in the twenty-first year aforesaid, at *London* aforesaid, that is to say, at the parish and ward aforesaid, having in his custody and possession a certain bill of exchange, commonly called an inland bill of exchange, signed and subscribed with the name of *E. N.* bearing date at *Bristol* the thirteenth day of *August*, one thousand seven hundred and eighty-one, directed to *P. S.* and *J. R.* above named, by the names and description of Messrs. *S.* and Co. *Queen-street*, for the payment of the sum of twenty-five pounds, twenty-one days after the date thereof, to Mr. *J. R.* or his order, to be placed to the accounts of him the said *E. N.* as *per* advice from the said *E. N.* he the said

Did falsely make, &c.
[* 383]

an indorsement, &c.

Eighth count, for uttering an indorsement, with the like intent. 2 Geo. II.

Did utter, &c.

Substance of the bill.

[* 384]

Well knowing, &c.

Ninth count, for forging an acceptance, with intention to defraud *J. V.* &c. 7 Geo. II.

PRECEDENTS of INDICTMENTS.

[* 385]
Tenth count,
for uttering an
acceptance with
the like intenti-
on.
7 Geo. II.

Eleventh count,
for forging an
acceptance, with
intention to de-
fraud the
drawees
7 Geo. II.

[* 386]

Did falsely
make, &c.

J. H. afterwards, to wit, on the said fourth day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, in the parish and ward aforesaid, feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false making, forging, and counterfeiting, an acceptance of the same bill of exchange, purporting to have been written by the said *P. S.* with intention to defraud the aforesaid *J. V.* Sir *R. G.* and *T. H.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. * And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* afterwards, to wit, on the said fourth day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, to wit, at the parish and ward aforesaid, feloniously did utter and publish as true a certain false, forged, and counterfeited acceptance of a certain bill of exchange, commonly called an inland bill of exchange, purporting to be the acceptance of *P. S.* and to have been written on the same bill by him the said *P. S.* which said bill of exchange last mentioned was signed and subscribed with the name of *E. N.* and directed to the said *P. S.* and *J. R.* by the names and description of Messrs. *S.* and *Co. Queen-street*, bearing date at *Bristol* the thirteenth day of *August*, one thousand seven hundred and eighty-one, by which said last-mentioned bill the said *E. N.* required the said *P. S.* and *J. R.* to whom the same was so directed as aforesaid, to pay Mr. *J. R.* or his order, the sum of twenty-five pounds, twenty-one days after the date thereof, and to place it to the accounts of him the said *E. N.* as per advice from him the said *E. N.* with intention to defraud the aforesaid *J. V.* Sir *R. G.* and *T. H.* (he the said *J. H.* at the said time when he so as aforesaid uttered and published the said last-mentioned acceptance of the same last-mentioned bill of exchange, then and there well knowing the same acceptance to be false, forged, and counterfeited), against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* on the said fourth day of *September*, in the twenty-first year aforesaid, at the parish and ward aforesaid, in *London* aforesaid, having in his custody and possession a certain other * bill of exchange, commonly called an inland bill of exchange, signed and subscribed with the name of one *E. N.* bearing date at *Bristol* the thirteenth day of *August*, one thousand seven hundred and eighty-one, directed to *P. S.* and *J. R.* by the names and description of Messrs. *S.* and *Co. Queen-street*, thereby requiring the said *P. S.* and *J. R.* to pay to Mr. *J. R.* or his order, the sum of twenty-five pounds, twenty-one days after date, and to place it to the accounts of him the said *E. N.* as per advice from the said *E. N.* he the said *J. H.* afterwards, to wit, on the fourth day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, in the parish and ward aforesaid, feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false making, forging, and counterfeiting, an acceptance of the same bill of exchange, purporting to have been written by the said *P. S.* upon the same bill, with intention to defraud the aforesaid *P. S.* and *J. R.* against the form of the statute in such case made and provided, and against the peace of our said lord

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the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. H.* on the same fourth day of *September*, in the twenty-first year aforesaid, at *London* aforesaid, to wit, in the parish and ward aforesaid, having in his custody and possession a certain other bill of exchange, commonly called an inland bill of exchange, signed and subscribed with the name of the aforesaid *E. N.* bearing date at *Bristol* the thirteenth day of *August*, one thousand seven hundred and eighty-one, directed to the aforesaid *P. S.* and *J. R.* by the names and description of Messrs. *S.* and *Co. Queen-street*, thereby requiring the said *P. S.* and *J. R.* to pay Mr. * *J. R.* or his order, the sum of twenty-five pounds, twenty-one days after date, and to place it to the accounts of him the said *E. N.* as per advice from him the said *E. N.* together with a false, forged, and counterfeited acceptance of the same bill of exchange, written upon the same bill, and purporting to have been written by the aforesaid *P. S.* he the said *J. H.* afterwards, to wit, on the said fourth day of *September*, in the twenty-first year aforesaid, with force and arms, at *London* aforesaid, in the parish and ward aforesaid, feloniously did utter and publish as true the said last mentioned false, forged, and counterfeited acceptance, with intention to defraud the aforesaid *P. S.* and *J. R.* (he the said *J. H.* at the time of uttering and publishing the said last-mentioned acceptance, then and there well knowing the same to be false, forged, and counterfeited), against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

Twelfth count,
for uttering,
with the like in-
tention.
7 Geo. II.

[* 387]

3. Indictment for forging and publishing a receipt for payment of money. 2 Geo. II. ch 25.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. B.* late of the parish of *St. Martin* in the *Fields*, in the county of *Middlesex*, yeoman, on the

third day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false making, forging, and counterfeiting, a certain acquittance and receipt for money, to * wit, for the sum of three pounds and three shillings, in the words, letters, and figures following, that is to say, *August* the 26th, 1781. Received of Mr. *J. B.* for *Moustone Quarry*, the full sum of three pounds three shillings. Received by me *T. F.* with intention to defraud *T. B.* of the said parish of *St. Martin* in the *Fields*, in the said county, gentleman, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

Did falsely
make, &c.

[* 388]

Receipt.

And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. B.* afterwards, to wit, on the said third day of *November*, in the twenty-first year aforesaid, with force and arms, at the parish of *St. Martin* in the *Fields* aforesaid, in the county aforesaid, a certain false, forged, and counterfeited acquittance and receipt for money, to wit, for the sum of three pounds and three shillings, feloniously did utter and publish as true; which said last-mentioned false, forged, and counterfeited acquittance and receipt is in the words, letters, and figures following, that is to say, *August* the 26th, 1781. Receiv'd of Mr. *J. B.* for *Moustone Quarry*,

Second count,
for uttering.

Receipt.

PRECEDENTS of INDICTMENTS.

Quarry, the full sum of three pounds three shillings. Receiv'd by me *T. F.* with intention to defraud the said *T. B.* of the parish of *St Martin* in the *Fields*, in the said county, gentleman, (he the said *J. B.* at the time when he so uttered and published the said last-mentioned false, forged, and counterfeit acquittance and receipt, well knowing the same acquittance and receipt, so by him uttered and published, to be false, forged, and counterfeited,) against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

Well knowing, &c. *Altering a writing across the face of a bank note is altering an indorsement within the statute. See Stra. * 18, 19. Foster's Crown Law, 116 to 121. Forgeries excepted out of General Pardon, 20 Geo. II. ch. 52. a*

[* 389]

[Trinity Term, 11 Geo. I. 3 *Ld. Raym.* 538.]

9. Information for a misdemeanor at common law, in the name of the attorney-general, by order of the house of lords, for forging an indorsement on a paper writing or certificate, in the name of the duke of Buckingham, touching a quantity of allum charged to the duke's account, &c.

First count, for forging.

Middlesex. **B**E it remembered, That *Philip Yorke*, knight, attorney-general of our sovereign lord the king, who for our said lord the king prosecutes in this behalf, in his proper person comes into the court of our said lord the king, before the king himself, at *Westminster*, in the county of *Middlesex*, on *Wednesday* next after three weeks of the *Holy Trinity* in this same term, and for our said lord the king gives the court here to understand and be informed, That *John Ward*, late of *Hackney*, in the county of *Middlesex*, esquire, being obliged to deliver three hundred and fifteen tons and one quarter of a ton of allum, of the value of five thousand pounds, to the most noble *Edmund*, duke of the county of *B.* and of *N.* at a certain day now past, he the said *John Ward*, wickedly contriving and intending to deceive and defraud the said duke of the aforesaid allum, and with an iniquitous and fraudulent intention to avoid the delivery of the same allum to the said duke, on the first day of *February*, in the eleventh year of *the reign of our sovereign lord *George*, by the grace of God of *Great-Britain, France, and Ireland* king, defender of the faith, &c. at *Westminster*, in the county of *Middlesex*, with force and arms, upon a back side of a certain certificate in writing, signed with the hand of one *Ambrose Newton*, did falsely forge and counterfeit, and cause to be falsely forged and counterfeited, a certain writing, in the words, letters, figures, and cyphers following, that is to say,

[* 390]

“ Schedule.

Tons.	C.
660	: 5.
315	: 5.
975	: 10.

 Mr. *John Ward*, I do hereby order you to charge the quantity of six hundred and sixty tons and one quarter of allum to my account, part of the quantity mentioned in this certificate, and out of the money arising by the sale of allum in your hand pay to Mr. *W. Ward* and yourself ten pounds for every ton, according to agreement; and for so doing this shall be your discharge. *Buckingham. April 30, 1706.*”

^a See the table to the several statutes relating to forgery, *Cro. Cir. Aff.* 538. 539, 540.

to the evil and pernicious example of all others in the like case offending, to the great damage of the said duke, and against the peace of our said lord the king, his crown and dignity. And the said attorney-general of our said lord the king for our said lord the king further gives the court here to understand and be informed, That the aforesaid *John Ward* being obliged to deliver three hundred and fifteen tons and one quarter of a ton of allum, of the value of five thousand pounds, to the aforesaid duke at a certain day now past, he the said *John Ward*, wickedly contriving and intending to deceive and defraud the said duke of the aforesaid allum, with an iniquitous and fraudulent intention to avoid the delivery of the same allum to * the said duke, afterwards, to wit, on the said first day of *February*, in the eleventh year aforesaid, at *Westminster* aforesaid, in the said county of *Middlesex*, with force and arms, a certain writing, falsely forged and counterfeited on the back side of a certain certificate in writing, signed with the hand of one *Ambrose Newton*, did wickedly, unlawfully, and fraudulently publish, and cause to be published, which said writing, so falsely forged and published, is in the words, letters, figures, and cyphers following, that is to say, [here set out the paper as before,] he the said *John Ward* then and there well knowing the said writing, by him the said *John Ward* so published as aforesaid, to be false, forged, and counterfeited, to the evil and pernicious example of all others in the like case offending, to the great damage of the said duke, and against the peace of our said lord the king, his crown and dignity. ^a

Second count,
for publishing.

[* 391]

* G A M I N G.

[* 392]

1. *Indictment for winning above ten pounds at cards, at one time and sitting.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *L. U.* late of the parish of *St. Paul, Covent-garden*, in the county of *Middlesex*, gentleman, after the first day of *May*, in the year of our Lord one thousand seven hundred and eleven, to wit, on the twentieth day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the ^b parish aforesaid, in the county aforesaid, did, by gaming and playing at cards with *N. O.* gentleman, win, at one time and sitting, above the sum of ten pounds, that is to say, the sum of one thousand and fifty pounds. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *L. U.* afterwards, to wit, on the twenty-first day of the said month of *November*, in the year aforesaid, at the same parish and county, did receive, obtain, and acquire to himself, of and

First count,
stating that the
defendant won
of, &c. so much,
and received
notes for the
money.
Did by gaming
win, &c.

Security received
for the money.

^a The defendant pleaded to this information, and on a trial at bar, by a special jury, he was found guilty, and received judgment; upon which his counsel moved in arrest of such judgment, alledging (amongst several other objections) that the offence was not at common law: but judgment being affirmed for the king, *Ward* was fined 500*l.* and ordered to stand in the pillory, &c. See the case at large, 2 *Ld. Raym.* 1461 to 1469

^{Quere}, if the above offence would not be deemed felony at this day by virtue of 2 *Geo. II.* ch. 23, § 1, under the words *acquittance* or *receipt*, or one of them?

^b This indictment being framed on the 9th of *Ann.* ch. 14, it seems that it should state the place to be out of the king's palace, within the proviso of § 9. *Vide Prec. 3, post.*

from

[* 393]

Second count,
stating a playing
by which he ac-
quired, &c.
omitting the
notes.

from the said *N. O.* for and in satisfaction of the said one thousand and fifty pounds, so won as aforesaid, three several promissory notes, each note of the value of three hundred and fifteen pounds, the property of the said *N. O.* amounting together to the value of nine hundred and forty-five pounds, each of which said notes was signed on the behalf of *M.* and company, * then being bankers in *London*, intitling the bearer of each of the said respective notes to the sum of three hundred and fifteen pounds; and also one other promissory note of the value of one hundred and five pounds, the property of the said *N. O.* signed on the behalf of *F. C.* and company, bankers, in *London*, intitling the bearer thereof to the sum of one hundred and five pounds, to the great damage of the said *N. O.* to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *L. U.* on the said twenty-first day of *November*, in the said twenty-first year of the reign of our said lord the king, at the parish aforesaid, in the county aforesaid, did, by gaming and play at cards with *N. O.* gentleman, win, obtain, and acquire to himself, at one time and sitting, above the sum of ten pounds, that is to say, the sum of one thousand and fifty pounds, of and from the said *N. O.* to the great damage of the said *N. O.* to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

2. *Indictment for winning above ten pounds at cards, at one time and sitting, by which the defendant acquired, &c. from the loser by the hands of a third person.*

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That *H. A.* late of the parish of *St. Mary M.* in the * county of *Middlesex*, gentleman, after the first day of *May*, in the year of our Lord one thousand seven hundred and eleven, to wit, on the twentieth day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the ^a parish of *St. Martin* in the *Fields*, in the county aforesaid, did, by gaming and playing at cards with *A. P.* gentleman, win, at one time and sitting, above the sum of ten pounds, that is to say, the sum of four hundred and twenty pounds. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *H. A.* afterwards, to wit, on the twenty-fourth day of *November*, in the year aforesaid, in the parish above mentioned, in the county aforesaid, did receive, obtain, and procure to himself of the said *A. P.* but from and by the hands of *G. S.* of *London*, as agent or servant to the said *A. P.* for and in satisfaction of the said four hundred and twenty pounds so won as aforesaid, the sum of four hundred and twenty pounds, of lawful money of *Great-Britain*, to the great damage of the said *A. P.* to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

^a See the preceding note.

3. *Indictment for winning above ten pounds at cards, at one time and sitting, not being within any of the king's palaces.*

Surry. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *Lambeth*, in the county of *Surry*, gentleman, * and *C. D.* late of the same, labourer, [* 395] being persons of evil name and fame, and of dishonest conversation, after the first day of *May*, in the year of our Lord one thousand seven hundred and eleven, to wit, on the ninth day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, (a) (not being in any of the palaces of our (a) See page 392. said lord the king, called *St. James* and *Whitehall*, nor within any royal palace whatsoever where our said lord the king was then actually resident, but in a certain house called *Lark-hall*, situate and being in the parish aforesaid, in the county aforesaid,) by playing there at an unlawful game at cards, called *cribbage*, with one *E. F.* they the said *A. B.* and *C. D.* at that unlawful game, at one time and sitting, did then and there unlawfully win of the said *E. F.* above the sum of ten pounds, to wit, the sum of eleven pounds and nine shillings, of lawful money of *Great-Britain*, of the monies of the said *E. F.* to the great damage of him the said *E. F.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

4. *Indictment for fraudulently winning money at dice.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *R. H.* late of the parish of *St. Martin* in the *Fields*, in the county of *Middlesex*, labourer, not regarding the laws and statutes of this realm, nor fearing the pains and penalties contained therein, after the first day of *May*, in the year of our Lord one thousand seven hundred and eleven, to wit, on the fourteenth day of *November*, in the twenty-first year of * the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, by * fraud, shift, cousenage, circumvention, deceit, unlawful device, and ill practice, did win, obtain, and acquire to himself twelve pounds nineteen shillings and sixpence, of lawful money of *Great-Britain*, of the monies of one *G. D.* of and from him the said *G. D.* in and by playing with him the said *G. D.* at dice, to the great damage of the said *G. D.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. [* 396]

This offence is also indictable at common law. Vide doctrine under *Deceit*, Prec. 2 & 13, ante.

By stat. 9 *Ann.* ch. 14, § 1, for the better preventing of excessive and deceitful gaming, it is enacted, *That after the first day of May, one thousand seven hundred and eleven, all notes, bills, bonds, &c. given, &c. by any person, where the whole or any part of the consideration is for money, or other valuable thing, won by gaming or*

a In order to support an indictment for this offence, it seems necessary (as appears by several manuscript precedents settled by eminent counsel) to shew how the fraud was practised; such as false tokens or signals from third persons, &c. as the fact may be. See the observations under *Deceit*, Prec. 16, ante, as to the necessity of shewing false tokens and pretences in other respects.

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playing at cards, dice, tables, tennis, bowls, or other game, or by betting, or for repaying any money knowingly lent for such gaming or betting, &c. shall be void: and where mortgages, &c. shall be of lands, &c. or shall incumber or affect the same, &c. such mortgages, &c. shall devolve on such persons as should or might have or be entitled to such lands, &c. in case the * grantor thereof had been dead, and as if such mortgages, &c. had been made to the persons entitled after the decease of the person incumbering: and all grants or conveyances made to hinder such lands, &c. from devolving upon such persons, shall be deemed fraudulent and void.

§ 2. Any person playing at cards, dice, &c. or betting and losing the value of ten pounds, and paying the same, or any part thereof, may, within three months, sue for and recover the money or goods so lost from the winner, with costs, &c. in which action it shall be sufficient to allege, that the defendant is indebted to the plaintiff, or received for his use, &c. the money so lost and paid, or converted the goods, &c. without setting forth the special matter; and in case the loser do not sue, any other person may, and recover the same, and treble the value, with costs, against such winners; one moiety to the informer, the other to the poor of the parish where the offence shall be committed.

§ 3. Every person liable to be sued shall answer upon oath such bills as shall be preferred against him, for discovering the sums of money, or other thing, so won at plea.

§ 4. The person who shall so discover and repay shall be indemnified from any other punishment.

§ 5 and 6. And person who shall by fraud, &c. in playing at cards, dice, &c. or by betting, &c. win any sum of money, &c. or shall win above ten pounds at any one time or sitting, such person so convicted on indictment, &c. shall forfeit five times the value of the sums, or other thing, so won, and, in case of fraud, be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury; any two or more justices may cause such persons to be brought before them as they have cause to suspect have no visible estate, &c. to maintain themselves by, and if they do not make it appear that the principal of their expences is not maintained by gaming, then such justices * shall require securities for their good behaviour for twelve months, and in default commit them to gaol.

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§ 7. Such persons finding sureties, and playing or abetting during the time for the value of twenty shillings, shall forfeit their recognizance.

§ 8. If any person shall assault and beat, or challenge to fight, any other person on account of money won by gaming, &c. being convicted thereof, he shall forfeit all his goods, &c. and suffer imprisonment for two years.

§ 9. This act shall not extend to prevent any person from gaming within any of her majesty's palaces of St. James's or Whitehall, during her majesty, her heirs, and successors' actual residence at either of the said palaces, or in other royal palace where she shall be resident, so as such playing be not in any house, &c. the freehold or inheritance whereof is out of the crown, and so as such playing be for ready money only.^a

By stat. 18 Geo. II. ch. 34, § 8, it is enacted, That if any person shall win or lose at play, or by betting, at any time, the sum or va-

^a A foot-race is a game within this statute; and one person running alone (against time) is within the meaning of it, &c. *Brown v. Berkeley*, Corp. 281. Vide *Lynall v. Longbotham*, 2 Wils. 36. So as to Horse-racing. *Goodburn v. Marley*. 2 Str. 1159. Vide also *Lord Raym.* 87, 452, 1034.

G U N S, &c.

lue of ten pounds, or within the space of twenty-four hours the sum or value of twenty pounds, such person shall be liable to be indicted for such offence within six months after it is committed, either before his majesty's justices of the king's bench, assize, gaol-delivery, or grand sessions; and being thereof legally convicted, shall be fined five times the value of the sum so won or lost; which fine, (after such charges as the court shall judge reasonable allowed to the prosecutors and evidence out of the same) shall go to the poor of the parish or place where such offence shall be committed.

* § 9. *Provided that if any person so offending shall discover any other person so offending, so that such person shall be thereupon convicted, the person so discovering shall be discharged, and indemnified from all penalties, by reason of any such offence, if such person so discovering hath not been before convicted thereof, and shall be admitted as an evidence to prove the same.*

[* 399]

See statutes 2 Geo. II. ch. 28; 12 Geo. II. ch. 28; 25 Geo. II. ch. 36, § 5; and 16 Car. II. ch. 7.^a

G U N S, &c.

Indictment for keeping a gun to destroy game.

Worcestershire. **T**HE jurors for our lord the king upon their oath present, That *H. V.* late of the parish of *Ombersly*, in the county of *Worcester*, yeoman, on the fourth day of *September*, in the twenty-first year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. then "not having lands and tenements, or any other estate of inheritance, in his own right, or in right of his wife, of the clear yearly value of one hundred pounds by the year, or for the term of his life; nor then having a lease or leases of ninety-nine years, or for any longer term, of the clear yearly value of one hundred and fifty pounds; nor then being son and heir apparent of an esquire, or any other person of higher degree; nor then being owner or keeper of any forest, park, chace, or warren;"^b he the said *H. V.* on the fourth day of *September*, in the year aforesaid, and on divers other days and times, as well before as after, at the parish of *Ombersly* aforesaid, in the county aforesaid, unlawfully and contemptuously had and kept, and still hath and doth keep, a certain gun for destroying the game of this kingdom, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

[* 400]

By stat. 22 & 23 Car. II. ch. 25, *Persons not being qualified in the manner recited in the above indictment are declared to be persons, by the laws of this realm, not allowed to have or keep for themselves, or any other person or persons, any guns, bows, grey-hounds, setting-dogs, ferrets, coney-dogs, lurchers, hayes, nets, lowbels, hare-pipes,*

^a *Cock-fightings* are expressed in this act; and it is also said, that an information against a person for using the game of cock-fighting may be at common law. 2 Bac. Abr. 620.

^b It seems a safer way to add at this place the following words "nor then being game-keeper to any lord or lady of a manor," (a) because it has been (a) 2 Bur. Just. determined that the game-keeper of a lord of a manor has a right to carry (15th edit. 328. a gun any where out of the manor. 2 Will. 387.

gins,

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(a) *Vide* page 95, *ante*.

gins, snares, or other engines, but are thereby (a) prohibited to have, keep, or use the same.

A conviction for using a gun, "being an engine for the destruction of game," without adding that the party used it for the destruction of game, is void. Dougl. (1st edit.) 658, note.

In a conviction on the game laws, the information must negative, specially, every one of the qualifications in 22 & 23 Car. II. The King against Wheatman, *ibid.* 331: but in such conviction the evidence need not negative every specific qualification under that act. Rex v. Spencer and Crowther, 1 Term. Rep. 125.

[* 401]

By 25 Geo. III. ch. 50, § 2, No person shall destroy game until he has delivered an account of his name and place of abode to the clerk of the peace or his * deputy, or to the sheriff or steward, clerk of the county, riding, shire, stewartry, or place where such person shall reside, and taken out a certificate thereof, for which he shall pay annually a stamp-duty of 2l. 2s.

Conviction of keeping dogs or engines, on 5 Ann. ch. 14, 2 Bur. Just. (15th edit.) 328. Same for carrying a gun on 33 Hen. VIII. ch. 6, *ibid.* 334.

As to the game-laws in general, see 2 Bac. Abr. 612, and 2 Bur. Just. title *Game*.

HORSE-STEALING.

Indictment for stealing a gelding.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That A. E. late of the parish of Hornsey, in the county of *Middlesex*, labourer, on the twelfth day of August, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one gelding of a bay colour, of the price of six pounds, of the goods and chattels of one J. D. then and there found, feloniously did steal, take, and ^a lead away, against the peace of our said lord the king, his crown and dignity.

[* 402]

By stat. 2 & 3 Edw. VI. ch. 33, All persons feloniously taking or stealing any horse, gelding, or mare, shall not be admitted to the privilege of the clergy, but shall be put from the same in like manner and form as though they had been indicted for feloniously stealing * of two horses, two geldings, or two mares, and thereupon found guilty by verdict, or confession, &c.

Note. A person who shall apprehend, or prosecute to conviction, any horse-stealer, shall have a certificate, signed by the judge, to exempt him from serving all parish and ward offices. See stat. 10 & 11 Will. III. ch. 23, under *Rewards*, *ante*, 22.

HOUSE-BREAKING.

Indictment for breaking a house in the day-time, with intent to steal.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That A. B. late of the parish of St. John, Wapping, in the county of *Middlesex*, labourer, on the first day of

a For stealing a horse, &c. (instead of carry away) say lead away; for oxen, cows, sheep, &c. drive away.

November,

H O U S E S.

November, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. about the hour of ten in the forenoon of the same day, with force and arms, at the parish aforesaid, in the county aforesaid, the dwelling-house of *B. C.* there situate, unlawfully did break and enter, with intent the goods, chattels, and monies, in the same dwelling-house then and there being, feloniously to steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

Vide Burglary and House-breaking, ante, 203.

If a man breaks a house in the day-time with an intent to steal, but steals nothing, this is no felony; but otherwise in case of breaking the house in the night with intent to steal, for that is burglary. 11 Co. Rep. 31, 32, Poulter's case. See Foster's Crown Law, 38, 39, &c.

* By 23 *Geo. III.* ch. 88, it is enacted, *That if any person or persons shall, after the first day of August, one thousand seven hundred and eighty-three, be apprehended, having upon him, her, or them any picklock key, crow, jack, bit, or other implement, with an intent feloniously to break and enter into any dwelling-house, warehouse, coach-house, stable, or outhouse; or shall have upon him, her, or them any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent feloniously to assault any person or persons; or shall be found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard or garden, or area belonging to any house, with an intent to steal any goods or chattels, every such person shall be deemed a rogue and vagabond, within the intent of 17 Geo. II. ch. 5. Vide 3 Will. & M. ch. 9. Vide also 13 Geo. III. ch. 38, 206, ante.*

[* 403]

H O U S E S.

Indictment for stealing above the value of forty shillings in a dwelling-house.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. C.* in the county of *Middlesex*, labourer, on the sixth day of *July*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one silver pint pot, of the value of forty shillings; six diaper napkins, of the value of seven shillings; and nine pewter dishes, of the value of twenty shillings, of the goods and chattels of one *I. P.* in the dwelling house of him the said * *I. P.* then and there being found, feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

[* 404]

By stat. 12 *Ann.* stat. 1, ch. 7, § 1, it is enacted, *That every person who shall feloniously steal any money, goods, &c. of the value of forty shillings, or more, being in a dwelling-house, or outhouse thereunto belonging, although such house or outhouse be not actually broken by such offenders, and although the owner of such goods, or any other person or persons, be not in such house or outhouse, or shall assist or aid any person to commit such offence, being convicted or attainted, by verdict or confession, &c. shall be absolutely debarred of clergy, &c.*

Provided, that nothing in this act shall extend to apprentices under the age of fifteen years who shall rob their masters. § 2. [Vide ante, 205, 206.]

N. B.

PRECEDENTS of INDICTMENTS.

N. B. *No reward on conviction in this case by the above-mentioned statute, or any other.*

And if the jury find under forty shillings, the party hath his clergy.

I N F O R M A T I O N.

Form of an information qui tam at a general quarter session of the peace, holden on Clerkenwell-green.

[* 405]

Middlesex. **B**E it remembered, That *G. B.* late of the parish of *A.* in the county of *Middlesex*, gentleman, who as well for our sovereign lord the now king as for himself doth prosecute in this behalf, cometh before the justices of our said lord the king assigned to keep the peace of our said lord the king in and for the said county of *Middlesex*, and also to hear and determine divers * felonies, trespasses, and other misdemeanors in the said county committed, at their general quarter session of the peace, holden at the *New Sessions-house* on *Clerkenwell-green*, in and for the said county, on *Monday* the day of , in the twenty-second year of the reign of our sovereign lord *George* the third, in his proper person; and as well for our said lord the king as for himself giveth the court here to understand and be informed, That *T. H.* late of *Highgate*, in the county aforesaid, broker, on, &c. [here insert the offence according to the statute, as it may be.—See the manner of setting out the offences in *Cro. Cir. Ass. 500 to 505*], against the form of the statute in such case made and provided: whereupon the said *G. B.* as well for our said lord the king as for himself, prayeth the advice of the court in the premises; and that the said *T. H.* may forfeit the sum of , according to the form of the statute aforesaid; and that he the said *G. B.* may have one moiety thereof, according to the form of the said statute; and also that the said *T. H.* may come here into court to answer concerning the premises; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*. And hereupon it is commanded to the said *T. H.* That, all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter session of the peace to be holden for the said county, to answer as well to our said lord the king as to the said *G. B.* who as well for our said lord the king as for himself doth prosecute, of and concerning the premises, and further to do and receive what the said court shall consider in this behalf.

[* 406]

* I N M A T E S.

THE indictment for receiving inmates, contained in the former editions of this work, has been expunged, for the reasons given under *Cottages*, ante, 277.

L A R C E N Y, G R A N D and P E T I T.

Indictment for grand larceny, in stealing the property of a different persons.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *Hornsey*,

a *Vide* Doctrine of Indictments, ante, § 89.

in

in the county of *Middlesex*, labourer, on the first day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one silver spoon, of the value of ten shillings, of the goods and chattels of one *J. L.* two brass candlesticks, of the value of two shillings, and two linen shirts, of the value of six shillings, of the goods and chattels of one *E. W.* then and there being found, feloniously did steal, ^a take, and carry away, against the peace of our said lord the king, his crown and dignity.

* 1. Grand larceny is a felonious and fraudulent taking and carrying away, by any person, of the mere personal goods of another, above the value of twelve-pence, not from the person, nor out of his house. 1 Haw. 89. [* 407]

2. Petit larceny agrees with grand larceny, except only in the value of the goods; so that wherever an offence would amount to grand larceny, if the thing stolen were above the value of twelve-pence, it is petit larceny, if it be but of that value or under. Ibid. 95.

To shew what is felony, and what not.

3. Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misanimadversion; as where persons break open a door in order to execute a warrant, which will not justify such a proceeding, for in such case there is no felonious intention. Ibid. 65.

4. It hath been holden, that one who finds the goods which I have lost, and converts them to his own use, with intent to steal them, is no felon; and a fortiori therefore it must follow, that one who has the actual possession of my goods by my delivery, for a special purpose, as a carrier, who receives them in order to carry them to a certain place; or a taylor, who has them in order to make me a suit of cloaths; or a friend, who is intrusted with them to keep for my use, cannot be said to steal them, by embezzling of them afterwards. Ibid. 89.

5. But it hath been resolved, that if a carrier ^b open a pack, and take out part of the goods; or a weaver, who has received silk to work; or a miller, who has received corn to grind, take out part thereof, with intention to steal the same, it is felony. Ibid. 90.

6. So when a man's goods are in such a place, where ordinarily they are or may be ordinarily placed, * and a person takes them, with intent to steal them, it is felony; and the pretence of finding must not excuse. 1 H. H. 506. [* 408]

7. It seems generally agreed, that one who has the bare charge or the special use of goods, but not the possession of them, as a shepherd, who looks after my sheep; or a butler, who takes care of my plate; or a servant, who keeps a key to my chamber; or a guest, who has a piece of plate set before him in an inn, may be guilty of felony in fraudulently taking away the same. 1 Haw. 90.

8. By stat. 21 Hen. VIII. ch. 7, Servants embezzling their masters goods to the value of forty shillings, or above, shall be punished as

^a The word take must be in; for to say did steal and carry away is not sufficient. Vide Doctrine of Indictments, ante, § 46; 4 Black. Com. 241; and 1 H. H. 508.

^b Vide Wynne's case, post, § 30.

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felons. But this shall not extend to any apprentice, nor to any person within eighteen years of age. *Vide Servants, post.*

9. It seemeth that any the^a least removing of the thing taken from the place where it was before is sufficient for this purpose, though it be not quite carried off; and upon this ground the guest, who, having taken off the sheets from his bed with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny; so also was he who had taken a horse in a close with an intent to steal him, being apprehended before he could get him out of the close. 1 Haw. 92, 93.

[* 409]

10. If the personal goods savour any thing of the realty, it cannot be larceny; and therefore they ought to be no way annexed to the freehold; wherefore it is no larceny, but a base trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them, being severed from the freehold, as wood^{*} cut, grass in cocks, stones dug out of the quarry; and this, whether they are severed by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them. 1 Haw. 93. 1 H. H. 510.

11. The goods ought also not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by the law, that for their sakes a man shall die; yet the stealing of an hawk, knowing it to be reclaimed, is felony by the common law and by statute, in respect of the very high value which was formerly set upon that bird. 1 Haw. 93.

12. Neither shall he who takes fish in a river or other great water, wherein they are at their natural liberty, be guilty of felony; as he may be who takes them out of a trunk or pond. *Ibid.* 94.

13. Upon the like ground it seems clear, that a man cannot commit felony by taking hares or conies in a warren, or old pigeons being out of the house; but it is agreed, that one may commit larceny in taking such or any other creatures *feræ naturæ*, if they be fit for food, and reduced to tameness, and known by him to be so. *Ibid.*

14. To steal goods, &c. in Middlesex, and carry them to Surry, the offender may be indicted or appealed in the county of Surry as well as that of Middlesex; because the possession still continues in the owner of them; and every moment the continuance will come under the word take, as much as in the first taking. 1 Haw. 90. 3 Inst.

[* 410]

113.^c But if A. be indicted^{*} for a robbery from the person, it is said that it must be laid in the county where the force and putting in^d fear was. 1 H. H. 507, 508. Nor can a pirate, who robs at sea, and carries goods into any county, be indicted out of the admi-

a Removing a parcel from one part of a waggon to another, with an intent to steal it, though the party be found with it in the waggon, is, in law, a sufficient taking and carrying away to constitute this offence. *Coffet's case*, Le Cro. Ca. 229.

b But now by 10 Geo III. ch 18, the stealing of dogs is punishable, upon conviction before two or more justices of the peace, with fine, &c. and, on non-payment thereof, with imprisonment and public whipping.

c *Vide abstract of stat. 2 & 3 Edw. VI. ch. 24, under Murder, post.*

d But a private prosecutor of an offender under the *Black Act*, viz 9 Geo I. ch. 22, may proceed by indictment in any county; nor is there a necessity for a special commission for the trial out of the county where the offence was committed. 1 Haw. (6th edit.) 225, n. 4.

L A R C E N Y.

jurisdiction, because the first taking was out of the reach of the common law. 3 Inst. 133. 1 Haw. 90.

Vide 3 Will. & M. ch. 9, and 25 Hen. VIII. ch. 3, § 3.

By 13 Geo. III. ch. 31, § 4. Persons who shall have stolen money, &c. in either part of the united kingdom, may be indicted for theft where the property is found upon them.

So by § 5, The receivers of money, &c. in either part of the united kingdom, knowing, &c. are triable where the property is received, though not originally stolen there.

As to removing offenders by warrant hence to Scotland, or thence thither, vide same act, § 1 & 2. Vide also Doctrine of Indictments, ante, § 33, 34, 35.

15. If one person at divers times steals goods or money in several parcels, as four-pence at one time, eight-pence at another, and six-pence at another, the whole amounting to twelve pence, this is grand larceny; and it may be all put together in one indictment. 1 H. H. 531. 1 Haw. 95, § 33.^a

16. Petit larceny is felony, but not of death; yet the convict forfeits goods, &c. and is punishable by * whipping; and the form of the indictment is exactly the same, only in respect to value. 1 H. H. 530.

17. In grand larceny, the jury may find to the value of ten-pence, which reduces the fact to petit larceny, and convict as such only punishable. Ibid. 1 Haw. 95.

18. The value of things stolen must be expressed in the indictment, to distinguish grand larceny from petit; under forty shillings out of a dwelling-house is but grand larceny within clergy (if the house is not broke), and if living things, you must say (instead of the value) of the price, viz. one ewe sheep, of the price of twenty shillings, of the goods and chattels of J. B. Vide Horsestealing, ante, 401.

19. To omit saying of the goods and chattels is fatal. Vide 2 H. H. 181, 182. But to say they were the goods and chattels of persons unknown is good. Ibid. 181.

20. An indictment, for that a man feloniously took twenty sheep, ewes and ewes, is not good, because it doth not appear how many of one sort, and how many of the other; but to say, did feloniously take twenty sheep generally will be good, without distinguishing, as in case of replevin or trespass. 2 H. H. 183.

By stat. 4 Geo. I. ch. 11, 6 Geo. I. ch. 23, The court may order any person convicted of larceny, or any felonious stealing of money, &c. within clergy (except persons convicted of receiving stolen goods, knowing them to be stolen), instead of being burnt in the hand or whipped, to be transported to any of his majesty's plantations in America for the space of seven years; and persons convicted for receiving stolen goods, knowing them to be stolen, or for offences without clergy that are pardoned generally upon condition of transportation, to be transported for the term of fourteen years; and if any shall rescue or aid such offender to make his escape, or be return before the expiration of * his term to Great-Britain or Ireland, they shall be deemed guilty of felony without clergy.^b

^a Yet Hawkins says this severity is seldom practised: ner is it law at this day, as appears by Petrie's case, Le. Cr. Ca. 265. Vide Doctrine of Indictments, ante, III, § 89.

^b Vide table to the statutes, Cro. Cir. Aff. 546.

[* 411]

[* 412]

Indictment for stealing a watch and chain privily from the person.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. John, Wapping*, in the county of *Middlesex*, labourer, on the fifteenth day of *May*, in the twenty-first year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one silver watch, with a silver chain, of the value of four pounds, of the goods and chattels of one *C. D.* from the person of the said *C. D.* privily, secretly, and without the knowledge of the said *C. D.* then and there feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

21. *This is larceny secretly from the person, which is either picking the pocket, or cutting the purse.*

Stat. 8 Eliz. ch. 4. *Offender oust of clergy, if the indictment pursue the statute, which is privily, without the knowledge of the party.*

22. *But if under the value of twelve-pence, then it remains petit larceny, as before; for the statute did not alter the offence, though it took away the privilege.* 1 Haw. 98. 4 Black. Com. 241.

23. *Therefore, if under twelve-pence, the indictment must not be secretly from the person.*

24. *The indictment need not conclude against the form of the statute, being always a felony at common law.* 2 H. H. 190.

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* N. B. *There is no reward given by any statute upon conviction in this case.*

25. *If offender, for secretly stealing from the person, be attainted and pardoned, upon condition of transportation, and return, &c. before his time into Great-Britain or Ireland, he is subject to the statute of 4 Geo. I. ch. 11, and 6 Geo. I. ch. 23. There can be no accessories in petit larceny. See Foster's Crown Law, title Larceny, 73, 74.*

Ring-dropping. 26. *To obtain property from another by the practice of ring-dropping is larceny, if the jury find it was obtained under a preconcerted design to steal it. Patch's case, Le. Cro. Ca. 231. So it is in the case of a person unknown, who had obtained money in like manner. Moore's case, ibid. 291.*

Chaise-hiring. 27. *To hire a chaise for any length of time with intention to convert it wrongfully to the use of the hirer is larceny, if it be in fact so converted; and the non-delivery of it to the owner is evidence of such conversion. Major Semple's case, ibid. 355.*

Horse-hiring. 28. *To obtain an horse under pretence of hiring it for a day is larceny, if the jury find it was so obtained with an intention of stealing. Peat's case, ibid. 213.*

Milk from cows, and wool from live sheep. 29. *So it may be committed by taking a milk from a cow, or by pulling wool from the bodies of live sheep or lambs, with an intention to steal. Martin's case, ibid. 181.*

Hackney-coachman. 30. *If a parcel be accidentally left in a hackney-coach, and the coachman, instead of restoring it to the owner, detains it, opens it, destroys part of its contents, and borrows money on the rest, he is guilty of larceny. Wynne's case, ibid. 349.*

a See an indictment under title *Milk*, hereafter.

L E A D.

For some further useful information on this subject see the index to the same book, titles *Felony*, *Indictment*, and *Larceny*.

* L E A D.

[* 414]

Indictment for unlawfully receiving stolen goods.

London. **T**HE jurors for our lord the king upon their oath present, That *S. C.* late of *London*, widow, and *A. J.* First count, for receiving, &c. of generally.

late of the same, yeoman, being common buyers and receivers of stolen lead, iron, bell-metal, and other things, on the second day of *March*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at *London*, that is to say, at the parish of *Allhallows* upon the *Wall*, in the ward of *Broad-street*, in *London* aforesaid, unlawfully and unjustly did buy and receive, and each of them did buy and receive, two pounds and one half-pound weight of bell-metal of the value of seventeen pence, and thirty-two pounds weight of lead, of the value of four shillings, of the goods and chattels of one *J. D.* then lately before feloniously stolen, taken, and carried away by one *G. B.* and one *T. H.* to the jurors aforesaid as yet unknown, they the said *S.* and *A.* and each of them, then and there well knowing the same to be stolen and unlawfully come by,) against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the

Second count, for receiving, &c. under value, &c.

jurors aforesaid, upon their oath aforesaid, do further present, That the said *S. C.* and *A. J.* afterwards, to wit, on the same day and year aforesaid, with force and arms, at *London* aforesaid, that is to say, at the parish and ward aforesaid, unlawfully and unjustly, in a clandestine manner, at under rates, prices, and values, did buy and receive, and each of them did buy and receive, from the aforesaid *G. B.* and *T. H.* other two pounds and one half pound weight of bell-metal, of the value of ten-pence, and one other thirty-two pounds weight of lead, of the value of four shillings, of the goods and chattels of the aforesaid *J. D.* there lately before feloniously stolen, taken, and carried away by certain ill-disposed persons, against the form of the statute, &c. [conclude as before]

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By stat. 29 Geo. I. ch. 30, § 1, Every person who shall buy or receive any lead, iron, copper, brass, bell-metal, or solder, knowing the same to be stolen or unlawfully come by; or shall privately buy or receive any stolen lead, &c. by suffering any door, window, or shutter to be left open or unfastened between sun-setting and sun-rising for that purpose; or shall buy or receive the same, or any of them, at any time, in any clandestine manner, shall be transported for fourteen years, although the principal felon has not been convicted of stealing the same.

By 21 Geo. III. ch. 69, Every person who shall buy or receive any Pewter. pewter pot or other vessel, or any pewter in any form or shape whatever, knowing the same to be stolen or unlawfully come by, &c. shall, upon conviction, be transported as a felon for seven years. ^a

^a Vide 22 Geo. III. ch. 58, § 1, noted under *Accessories*, ante, 130, § 18, and *Transportation*, post.

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Indictment for stealing lead fixed to a dwelling house, and against the aider, assister, and receiver.

[* 416]

LONDON. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of *London*, labourer, after the twenty-fourth day of *June*, in the year of our Lord one thousand * seven hundred and thirty-one, to wit, on the sixth day of *September*, in the twenty-sixth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish of *Allhallows* upon the *Wall*, in the ward of *Broad-street*, in *London* aforesaid, sixty pounds weight of lead, of the value of four shillings, belonging to *C. D.* and then and there fixed to the dwelling-house of the said *C. D.* feloniously did rip, steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

Against the aider and assister in the above offence.

AND the jurors aforesaid, upon their oath aforesaid, do further present, That *C. W.* late of *London* aforesaid, labourer, on the said sixth day of *September*, in the said twenty-first year of the reign of our said lord the king, with force and arms, at the parish and ward aforesaid, in *London* aforesaid, feloniously was present, aiding, abetting, and assisting the said *A. B.* in stealing the said sixty pounds weight of lead, so as aforesaid fixed to the said dwelling-house, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

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[As before observed.]

* *Against the receiver.*

AND the jurors aforesaid, upon their oath aforesaid, do further present, That *E. F.* late of *London* aforesaid, labourer, afterwards, to wit, on the said sixth day of *September*, in the said twenty-first year of the reign of our said lord the king, with force and arms, at the parish and ward aforesaid, in *London* aforesaid, the said sixty pounds weight of lead, so as aforesaid feloniously stolen, feloniously did receive (he the said *E. F.* then and there well knowing the said sixty pounds weight of lead to have been feloniously stolen), against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

The ripping, taking, and carrying away lead, or any other thing fixed to a freehold, was formerly but a misdemeanor; but now, by stat. 4 Geo. II. ch. 32, to steal, rip, cut, or break, with intent to steal, any lead or iron bar, iron gate, iron palisado, or iron rail whatsoever, fixed to any dwelling-house, outhouse, coach-house, stable, or other building used or occupied with such dwelling-house or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house or other building, is felony: and so it is in the aiders, abettors, and assisters, and such as shall buy or receive such lead or iron, knowing the same to be stolen.

^a This may begin immediately after the word *dignity*, which concludes the offence against the principal. *Vide Accessary, ante, 126, 127.*

Principal

L I B E L.

Principals to be transported for seven years. Accessories to have the like punishment.

The indictments must conclude against the form of the statute, being a felony created by it.

It is a perpetual law, and no time limited to prosecute.

Extended to copper, brass, bell-metal, utensil, or fixture being fixed, &c. by 21 Geo. III. ch. 68. Vide 23 Geo. III. ch. 88, under Housebreaking, ante.

*HICKMAN'S CASE.

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One Hickman was indicted for stealing lead from Hendon church, which was laid to be the property, first, of the vicar; secondly, of the church-wardens; thirdly, of the inhabitants and parishioners. The property being fixed to the freehold, it was doubted whether it could be the subject of larceny; and, if it could, whether the property resided as laid in any of the counts of the indictment? The judges were of opinion, first, that a church is included within these general words of the act, "or any other building whatsoever;" secondly, that the act having made the offence to consist in "stealing from any dwelling house or other building, &c." the charge in the indictment, that it was stole from Hendon church, was alone a certain and sufficient description of the offence to support the indictment; that the residence of the property was immaterial; and that the conviction was proper upon the first count. 1 Haw. (6th edit.) 218, n. O. B. 1785.

By 25 Geo. II. ch. 10, Persons entering mines of black lead with intent to steal, or who shall from thence steal, any black lead, &c. and their aiders and abettors, are deemed felons; who may, upon conviction, be committed to prison for a year, and publicly whipped, or transported for seven years; and the receivers of such lead, &c. knowing the same to have been stolen, shall, upon conviction, suffer the same pains and penalties as are inflicted upon persons receiving any stolen goods and chattels: and by the same statute it is also enacted, That if the principals or their aiders, so committed or transported, shall voluntarily escape or break prison, or return from transportation before, &c. they shall, upon conviction, suffer death, without benefit of clergy.

*L I B E L.

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Indictment for printing and publishing a libel against peers, bishops, and commons.

Middlesex. THE jurors for our lord the king upon their oath present, That W. R. late of the parish of St. Martin in the Fields, in the county of Middlesex, printer, being a malicious and seditious man, and of a depraved mind, and wicked and diabolical disposition; and also deceitfully, wickedly, and maliciously contriving and abetting against the most honourable Sir R. W. knight of the most noble order of the garter, chancellor and under-treasurer of the Exchequer of our said lord the king, and one of the commissioners of our said lord the king for executing the office of treasurer of the Exchequer of our said lord the king, and one of the privy council of our said lord the king, to detract, scandalize, and vilify, and to represent the said Sir R. W. as an unjust officer

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Did print and publish.

Libel.

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officer, and minister, and little fit to be used and intrusted by our said lord the king in the weighty affairs of this kingdom, and also to bring the said Sir R. W. (as much as in him the said W. R. lay) into great hatred, contempt, and disgrace, not only with all his majesty's liege subjects, but also with our said lord the king; and also deceitfully, wickedly, and maliciously contriving and abetting to detract, scandalize, and vilify the peers of this realm, the bishops of the church of *England* by law established, and the members of the honourable house of this kingdom, and to represent the said peers, bishops, and members of the house of commons * as corrupt persons, and to bring them into great scandal, infamy, hatred, and disgrace with all the liege subjects of our said lord the king; and for that purpose did, on the sixth day of *July*, in the first year of the reign of our said sovereign lord *George* the second, king of *Great-Britain*, *France*, and *Ireland*, defender of the faith, with force and arms, at the said parish of *St. Martin* in the *Fields*, in the said county of *Middlesex*, wickedly, and maliciously print and publish, and cause and procure to be printed and published, a certain scandalous and seditious libel, intituled, *Robin's Reign, or Seven's the Main, being an explanation of C. D's. seven Egyptian hieroglyphicks prefixed to the seven volumes of the Craftsman: The dye is flung*; in which said libel of and concerning the said Sir R. W. and the said peers, bishops, and commons of this kingdom, also of and concerning the votes given by the said peers, bishops, and commons, are contained, among other things, divers scurrilous, feigned, false, scandalous, seditious, and malicious matters, according to the *tenor* following, to wit, *See R——t* (meaning the said Sir R. W.) *C——s* (meaning the said members of the said house of commons of this kingdom), *L——ds* (meaning the said lords of this kingdom, and *B——s* (meaning the said bishops of the church of *England* by law established), *buy, speak then, spectator, is corruption high? Mark well the visage of each slavish tool; the blockhead, hypocrite, and gawdy fool; 'tis these great men* (meaning the said peers, bishops, and members of the house of commons) *who give our wealth away; borrow in p——s* (meaning pensions), *but in v——* (meaning the votes of the said lords, bishops, and commons) *they pay; like Judas thus for gold betray the * state; his crimes they* (again meaning the said lords, bishops, and commons) *share, and may they* (again meaning the said lords, bishops, and commons) *share his fate*; to the great scandal and infamy of the said Sir R. W. and also of the said peers, bishops, and members of the said house of commons of this kingdom, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case of offending, and against the peace of our said lord the king, his crown and dignity. ^b

Indictment for publishing a scandalous and libellous letter, imputing the crime of theft to the prosecutor.

Middlesex. **T**HE jurors for our lord the king upon their oath present, *G. D.* late of the parish of *St. Giles* in the *Fields*, in the county of *Middlesex*, gentleman, being a person of an envious, evil, and wicked mind, and of a most malicious

^a Vide *Rex v. John Wilkes, esq. 4 Burr. 2527.*

^b Information against *J. Horne*, for writing and publishing a libel against the king and government, *Cro. Cir. Aff. 112.*

disposition,

disposition, and wickedly, maliciously, and unlawfully minding, contriving, and intending, as much as in him lay, to injure, oppress, aggrrieve, and vilify the good name, fame, credit, and reputation of one *J. T.* gentleman, a good, peaceable, and worthy subject of our said lord the king, and to bring him into great contempt, hatred, infamy, and disgrace, on the seventh day of September, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, a certain false, scandalous, and libellous writing against the said *J. T.* falsely, maliciously, and scandalously * did frame and make, and in the name of him the said *G. D.* then and there did cause to be written and published, in the form of a letter, directed to him the said *J. T.* the tenor of which said writing is as follows, to wit, *To J. T. These. Scoundrel,* (meaning the said *J. T.*) *it may not be amiss to acquaint you* (meaning him the said *J. T.*) *as the time draws near, you* (meaning the said *J. T.*) *may be preparing yourself* (again meaning the said *J. T.*) *for a trial, for stealing the turkies out of my* (meaning his the said *G. D.*'s) *yard, when I* (meaning himself the said *G. D.*) *hope to see you* (meaning the said *J. T.*) *sing a neck psalm, and perish according to law, you hellhound* (meaning the said *J. T.*) *Subscribed G. D.* (meaning himself the said *G. D.*) and that he the said *G. D.* with intention to scandalize the said *J. T.* and to bring him into contempt, hatred, infamy, and disgrace, the said false, malicious, and scandalous libellous writing, so as aforesaid framed, written, and made, afterwards, to wit, on the said seventh day of September, in the year aforesaid, and on divers other days and times, as well before as afterwards, at the parish aforesaid, in the county aforesaid, to divers liege subjects of our said lord the king, then and there present, falsely, maliciously, and scandalously did openly deliver, and cause to be delivered, to the great scandal, infamy, and damage of the said *J. T.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

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A libel is a malicious defamation, expressed either in printing or writing, or by signs, * pictures, &c. tending either to blacken the memory of one who is * dead, or the reputation of one who is alive, and thereby exposing him to public hatred, contempt, and ridicule; and, from its pernicious tendency, has been deemed a public offence at the common law: for men, not being able to bear the having their errors exposed to public view, were found by experience to revenge themselves on those who made sport with their reputations; whence arose duels and breaches of the peace: whereby written scandal has been held in the greatest detestation, and received the utmost discouragement in our courts of justice. Vide 3 Bac. Abr. 490, and the several authorities there cited.

What shall be deemed a libel.

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The truth cannot be justified at the suit of the king, 3 Bac. Abr. 495; but it is otherwise at the suit of the party injured. Bul. N. P. (5th ed.) 8, 9.

* Publishing an obscene book is punishable as a libel. *Rex v Curl*, 2 Stra. 788. Indictment for exposing to sale and public view an obscene print, *Cro. Cir. Aff.* 484.

* Indictment for writing ludicrous verses, accusing the prosecutrix with immorality, profaneness, &c. with a view to draw her into hatred and contempt, and sending the same to her in the form of a letter, *Cro. Cir. Aff.* 108.

For further information on this subject, vide 1 Haw. 193; 3 Bac. Abr. 490; Com. Dig. title Libel; 3 Black. Com. 125; and 4 Black. Com. 150.

Although

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Remedy by the king and the party injured, &c.

Although the party may, where it is in writing or print, proceed in a criminal way against the author, he is not thereby precluded from obtaining redress, by action, for the injury done to himself. 4 Bac. Abr. 483. Vide also Black. Com. 150.

Publication, &c

The writing of slanderous words in a letter to a third person is a publication of them. 4 Bac. Abr. 483.

Spiritual words

If the words be only a spiritual defamation, the remedy is by a suit in the spiritual court. Ibid. But if a temporal damage has been received from words which are a spiritual defamation, or if such words are coupled with others which are cognizable at common law, a prohibition lies to a suit in a spiritual court for such words. Galizard v. Rigault, Salk. 552. Brown v. Gibbons, ibid. 206. Byron v. Elmes, ibid. 693.

coupled with those that are actionable.

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• L I N E N.

Indictment for stealing linen from a bleaching croft.

Surry. **T**HE jurors for our lord the king upon their oath present That A. B. late of the parish of W. in the county of Surry, labourer, on the first day of May, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, thirty yards of linen, of the value of thirty shillings, of the proper goods and chattels of C. D. of the parish aforesaid, in the county aforesaid, whittler, then and there being laid, placed, and exposed to be whitened in a certain bleaching croft of the said C. D. situate, lying, and being in the parish aforesaid, in the county aforesaid, feloniously did steal, take, and carry away against the peace of our said lord the king, his crown and dignity.

By stat. 18 Geo. II. ch. 27, it is enacted, *That every person who shall, by day or night, feloniously steal any linen, fustian, callico, cotton, cloth, or cloth worked, woven, or made of any cotton or linen yarn mixed, or any thread, linen, or cotton yarn, linen or cotton tape, incle, filleting, laces, or any other linen, fustian, or cotton goods or wares whatsoever, laid, placed, or exposed to be printed, whitened, bowked, bleached, or dried in any whitening or bleaching croft, lands, fields, or grounds, bowking-house, drying-house, printing-house, or other building, ground, or place, made use of by any callico-printer, whittler, crofter, bowker, or bleacher, for printing, whitening, bowking, bleaching, or drying the same, to the value of ten shillings; or who shall aid or assist, or shall wilfully or maliciously hire or procure any other person or persons to commit any such offence; or who shall buy or receive such goods or wares so stolen, knowing the same to be stolen as aforesaid, being lawfully convicted thereof, shall be, and is and are hereby declared to be, guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy: but the judge or court may, instead of giving judgment of death, order the offender to be transported for fourteen years; and if the offender so ordered for transportation shall break gaol or escape before such transportation, or shall return from transportation, without lawful cause, before the expiration of the fourteen years, he shall suffer death, without benefit, &c.*

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And by 4 Geo. III. ch. 37. § 16, *If any person shall, by day or night, break into any house, shop, cellar, vault, or other place or building, or by force enter into any house, shop, cellar, vault, or other place*

L O D G E R S, L O T T E R I E S.

place or building, with intent to steal, cut, or destroy any linen yarn, or any linen cloth, or any manufacture of linen yarn belonging to any manufactory, or the looms, tools, or implements used therein, or shall wilfully or maliciously cut in pieces or destroy any such goods, when exposed either to bleach or dry, he shall be guilty of felony, without benefit of clergy.^a

L O D G E R S.

Indictment for stealing goods let by contract to be used with a lodging.

Middlesex. **T**HE jurors for our lord the king upon their oath present, that *S. V.* late of the parish of *St. Giles* in the *Fields*, in the county of *Middlesex*, widow, on the ninth day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one flaxen sheet, of the value of six shillings, and two brass candlesticks, of the value of three shillings, of the goods and chattels of one *F. S.* (the same goods and chattels being in a certain lodging-room in the dwelling-house of the said *F. S.* there situate, let by contract by the said *F. S.* to the said *S. V.* and to be used by the said *S. V.* with the lodging aforesaid), then and there being found, feloniously did steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

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By stat. 3 & 4^a *Will. & M.* ch. 9, § 5, *If any person or persons shall take away, with intent to steal, &c. any chattel, bedding, or furniture, which by contract or agreement, they are to use, or shall be let to them in lodgings, such taking, &c. shall be adjudged larceny and felony.*

This offence was formerly, before the making of this act, but a trespass; therefore the indictment must conclude against the form of the statute, as it is created felony by the statute.

This statute does not take away clergy.

* L O T T E R I E S.

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Indictment for setting up a lottery.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *R. B.* late of the parish of *St. Leonard, Shoreditch*, in the county of *Middlesex*, fan-painter, and *E.* his wife, being ill-disposed persons, little regarding the laws and statutes of this realm, and not fearing the pains and penalties therein contained, on the ninth day of *April*, in the twenty-first year of the

^a *Vide* title *Manufactory*, under *Felonies without Clergy*, *Cro. Cir. Aff.* 541. As to counterfeiting stamps on linen, &c. *vide* 17 *Geo. II.* ch. 30, and the several statutes relating to such property, *Cro. Cir. Aff.* 539.

^b It stands thus in *Pickering's* Statutes, and is so quoted by *Sir William Blackstone* in the fourth book of his Commentaries, page 240: but in *Hawkins* and *Ruffhead's* Statutes it is described as having been made in the third year of *William* and *Mary*. If a statute be recited as of the third year of the reign, and it appears to have been made in the third and fourth years, &c. the variance will be fatal. *Cowp.* 474. *Vide* also 1 *Term Rep.* 224, and 2 *Term Rep.* 654.

^c See the note in *Cro. Cir. Aff.* 112.

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reign of our sovereign lord George the second, king of Great-Britain, &c. at the parish aforesaid, in the county aforesaid, did publicly set up and exercise a certain lottery, for the disposal of divers goods, wares, and merchandizes; and the said R. B. and E. his wife, did then and there expose the said lottery, to be played at by the subjects of our said lord the king, for the sum of six pence, paid to them the said R. B. and E. his wife, for each ticket in the said lottery, in contempt of our said lord the king and his laws, to the common nuisance of all the subjects of our said lord the king, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

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By stat. 10 & 11 Will. III. ch. 17, after reciting, *That many mischievous and unlawful games, called lotteries, have for divers years last past been set up in most of the eminent cities and towns in this kingdom, by colour of several patents under the great seal for the said lotteries, or some of them, it is enacted* * and declared, *That all such lotteries are common and public nuisances; and that all grants, patents, and* ^a *licences for lotteries are void, and against law; and that after the twenty-ninth day of December, one thousand six hundred and ninety-nine, none shall publicly or privately exercise, keep open, shew, or expose to be played at, drawn at, or thrown at, or shall draw, play, or throw at, any such lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and every person so exercising, &c. at any such lottery, &c. shall, for every such offence, forfeit five hundred pounds, to be recovered by information, bill, plaint, or action at law, &c. one third to the king, another to the poor, and the other (with double costs) to the informer or prosecutor; and the offenders shall likewise be prosecuted as common rogues. Every person that shall play, throw, or draw at any such lottery, &c. shall, for every offence, forfeit twenty pounds to the uses aforesaid, to be recovered by information, &c.*

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By stat. 8 Geo. I. ch. 2, *Every person who shall erect, set up, continue, or keep any office or place, under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money; or shall sell or expose to sale any houses, &c. by way of lottery, or by lots, tickets, numbers, or figures; or who shall make, print, advertise, or publish, or cause to be made, printed, advertised, or published, * proposals or schemes for advancing of small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some public lottery or lotteries; or shall deliver out, or cause or procure to be delivered out, tickets to persons advancing such sums, to intitle them to a share of the money so advanced, according to such proposals or schemes, or shall make, print, or publish, or cause to be made, &c. any proposal or scheme of the like nature, under any de-*

^a It is, however, universally known at this day, that lotteries are licensed under certain restrictions; and that justices of the peace have power to commit, &c. See the lottery act for the time being.

Conviction under 22 Geo. III. ch. 47, for insuring a ticket in the lottery authorized by 25 Geo. III. quashed, because the information did not state that it was a ticket in the state lottery. *Rex v. Trelawney, Easter, 26th Geo. III. B. R. 1 Term Rep. 222.* See also *Rex v. Jefferies, ibid. 241,* and *Rex v. Salomons, ibid. 249.*

nomination,

M A I M I N G.

nomination, name, or title whatsoever, and shall be thereof convicted on the oath of one or more credible witness or witnesses, by two or more justices of the peace of the county, &c. where such offence shall be committed, or the offender shall be found, the person so convicted shall, for every such offence, (over and above any former penalties inflicted by any former act or acts of parliament made against private and unlawful lotteries,) forfeit five hundred pounds, one third to the crown, one other to the informer, and the remaining third to the poor of the parish where the offence shall be committed, to be levied by distress and sale of the offender's goods, by warrant of the justices before whom convicted; and shall also, for every such offence, be committed by the said justices to the county gaol, there to remain, without bail or mainprize, for one whole year, and from thence till the said five hundred pounds be fully paid: but persons aggrieved by the determination of such justices may appeal to the next quarter session for the county, &c. whose judgment shall be final.

Adventurers in such sales and lotteries, &c. shall forfeit double the sum contributed to the same.

See stat. 12 Geo. II. ch. 28, and the subsequent lottery acts. *

* M A I M I N G.

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Indictment of felony by slitting a nose, and against the aider and abettor.

Suffolk. **T**HE jurors for our lord the king upon their oath present, That *J. W.* late of the borough of *Bury St. Edmond*, in the county of *Suffolk*, labourer, and *A. C.* late of the borough aforesaid, in the county aforesaid, esquire, after the twenty-fourth day of *June*, in the year of our Lord one thousand six hundred and seventy one, to wit, on the first day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. contriving and intending one *E. C.* then and yet being a subject of our said lord the king, to maim and disfigure, at the borough aforesaid, in the county aforesaid, with force and arms, in and upon the said *E. C.* in the peace of God and our said lord the king then and there being, on purpose, and on malice *aforethought*, and by lying in wait, unlawfully and feloniously did make an assault, and the said *J. W.* with a certain ^{With an iron} iron bill, of the value of one penny, which he the said *J. W.* in ^{bill, &c.} his right hand then and there had and held, the nose of the said *E. C.* on purpose, and of his malice *aforethought*, and by lying in wait, then and there unlawfully and feloniously did slit, with intention the said *E. C.* in so doing, in manner aforesaid, to maim and disfigure; * and that the aforesaid *A. C.* at the time the aforesaid felony, by the said *J. W.* in manner and form aforesaid, was done and committed, to wit, on the said first day of *January*, in the twenty-first year of the reign aforesaid, at the borough aforesaid, in the

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* An affidavit to hold to bail on the lottery act of 27 Geo. III. ch. 1, should specify the nature of the offence, and aver, that the defendant has incurred the forfeiture: but the offence need not be described circumstantially; nor is the plaintiff obliged to swear that the defendant is indebted to him in the amount of the penalty. *Davis v. Mazzinghi*, 1 Term Rep. 705.

Vide also Watson v. Shaw, 5c. 2 Term Rep. 654.

county

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county aforesaid, with force and arms, on purpose, and of his malice *aforethought*, and by lying in wait, unlawfully and feloniously was present, aiding and abetting the said *J. W.* in the felony aforesaid done and committed: ^a and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *J. W.* and *A. C.* on the said first day of *January*, in the twenty-first year of the reign aforesaid, at the borough aforesaid, in the county aforesaid, with force and arms, on purpose, and of their malice *aforethought*, and by lying in wait, the felony aforesaid, in form aforesaid, unlawfully and feloniously did do and commit, and each of them did do and commit, against the peace of our said lord the king, his crown and dignity, and against the form of the statute in such case made and provided.

By stat. 22 & 23 Car. II. ch. 1, § 7, *If any person or persons, from and after the twenty-fourth day of June, in the year of our Lord one thousand six hundred and seventy-one, on purpose, and of malice*^b *fore-thought, and by lying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb * or member of any subject of his majesty, with intention in so doing to maim or disfigure, in any the manners before mentioned, such his majesty's subject, that then, and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, (knowing of and privy to the offence as aforesaid,) shall be guilty of felony, without benefit of clergy.*

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§ 8. *Attainder on this statute shall not work any corruption of blood or forfeiture.*

Sir J. Coventry, a member of the house of commons, had, a little before the making of this act, been assaulted in the street, and his nose slit, which was the occasion of the making of this act; therefore it is called Coventry's act.

Upon this statute A. C. and J. W. were tried, condemned, and executed at Suffolk assizes, 8 Geo. I. for slitting the nose of Mr. C.

M A R R I A G E.

Indictment of felony for solemnizing matrimony without licence, &c.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. G.* late of the *Savoy*, in the county of *Middlesex*, clerk, after the twenty-first day of *March*, in the year of our Lord one thousand seven hundred * and fifty-four, to wit, on the seventh day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the *Savoy* aforesaid, in the county of

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^a Vide *Cr. Cir. Aff.* 219.

^b The words in both the *folio* and *octavo* editions of the Statutes are *malice fore-thought*; and they were so expressed in the indictments against *B. Carroll* and another for maiming *Cranley Thomas Kerby*, esquire, printed in the *Crown Circuit Assizes*, 218. The form of that precedent differs also in other respects from the present; but it seems not materially so, as the offenders in both cases were executed. See the case reported in *Mr. Leach's Crown Cases*, 59. It is now usual, in all indictments for murder, to lay the words *malice afore-thought*, of which there are many instances in the *State Trials*.

See *Mary Blandy's case*, 10 *State Tr.* page 1. The indictment in *Oneby's case*, 2 *Ld. Raym.* 1485, uses the word *fore-thought*, and held good; but it seems prudent to pursue the more modern forms. The *special verdict*, the arguments, and determination, in the latter case, are well worth reading.

Middlesex

M I L K.

Middlesex aforesaid, did unlawfully, knowingly, wilfully, and feloniously solemnize matrimony between *J. N.* late of the parish of *St. Paul, Covent-garden*, in the county of *Middlesex*, then a batchelor, and one *J. P.* then a single woman, without publication of banns of marriage in that behalf, and without any licence of marriage in that behalf first had and obtained from any person or persons having authority to grant the same, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. ^a

By 26 Geo. II. ch. 33, § 8, Solemnizing matrimony in any other place than a church or public chapel, &c. (unless by special licence from the archbishop of Canterbury), or without publication of banns, unless licence of marriage be first obtained from some person or persons having authority to grant the same, is deemed felony; and the offender shall be transported for fourteen years.

Prosecution to be within three years. § 9.

* M I L K.

[* 434]

Indictment for unlawfully milking a cow, and stealing the milk.

Gloucestershire. **T**HE jurors for our lord the king upon their oath present, That *William Humphreys*, late of the parish of *Westbury*, in the county of *Gloucester*, labourer, being an evil-disposed person, on the twenty-ninth day of *November*, in the eighteenth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully did enter a certain stable, there situate, belonging to one *Walter Wilkinson*, and then and there unlawfully and injuriously did milk a certain cow of and belonging to the said *Walter Wilkinson*, being in the said stable of him the said *Walter Wilkinson*; and that he the said *William Humphreys* by such milking did then and there draw and extract three quarts of milk, of the value of three-pence, from and out of the said cow; and the said three quarts of milk, so drawn and extracted as aforesaid, of the goods and chattels of the said *Walter Wilkinson*, he the said *William Humphreys* then and there unlawfully and feloniously did steal, take, and carry away, to the great damage of the said *Walter Wilkinson*, and against the peace of our said lord the king, his crown and dignity. ^b

^a A clergyman was indicted for a similar offence at *Leicester* Lent assizes, 1790, convicted, and sentenced to be transported for fourteen years.

^b It has been lately determined upon a case reserved by Mr. Justice *Bathurst*, that larceny may be committed by taking milk from a cow, because it would be larceny to steal the cow itself. *Vide Martin's case*, *Le. Cro. Ca.* 181. So it may by pulling wool from the bodies of live sheep or lambs with intent to steal. *Ibid. Dalt.* (edit. 1727) 501. It is also reported in *Martin's case*, that it is no larceny at common law to gather and carry away (a) fruit from a tree which is growing, because, from its adherence to the freehold, it is not larceny to steal the (b) tree itself: but *Dalton*, in the above page, says, by 43 *Eliz.* that if a man gathers his apples, or cuts down his tree or corn, then it is felony to carry them away with a felonious intent.

(a) Punished with whipping
(b) *Vide Black Act, ante, and Cro. Cir. Ass.*

[* 435]

* M I L L E R.

Indictment against a miller for fraudulently returning meal other than the produce of the corn sent to him to be ground.

That Z. E.

did keep a common and public mill,

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and did receive wheat of one G. L. to be ground, &c.

That the said Z. E. being an evil-disposed person,

did deliver to G. L. meal and bran other and different, &c.

[* 437]

THE jurors for our lord the king upon their oath present, That Z. E. late of the parish of W in the county of *Stafford*, miller, on the twentieth day of *August*, in the tenth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and long before, and continually from thence until the day of the taking of this inquisition, was possessed of and did keep, and still is possessed of and doth keep, a certain common and public mill, called the windmill, situate and being at the parish aforesaid, in the county aforesaid, for the purpose of grinding wheat and other corn therein; and during all the time aforesaid caused to be ground divers large quantities of wheat and other corn, of and belonging to divers liege subjects of our said lord the king, in the said mill, in consideration of * certain tolls or rewards received, had, and taken by him the said Z. E. of and from the said subjects out of such wheat and corn on those occasions; and that he the said Z. E. on the said twentieth day of *August*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did receive of and from one G. L. a liege subject of our said lord the king, twenty bushels of good, sound, and wholesome wheat, of the goods and chattels of him the said G. L. of the value of four pounds, of lawful money of *Great-Britain*, to be ground at and in the said mill of him the said Z. E. for a certain reasonable toll to be had, received, taken, and deducted by him the said Z. E. from and out of the said twenty bushels of wheat, on account of and as a reward for grinding the residue thereof at and in the said mill; by reason whereof he the said Z. E. should and ought to have delivered unto the said G. L. all the true, real, and proper meal which the aforesaid residue of the said twenty bushels of wheat should yield and produce after grinding the same as aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said Z. E. being an evil-disposed person, greedy and eager of dishonest lucre and gain, and wickedly, unlawfully, falsely, fraudulently, and deceitfully contriving and intending to cheat and defraud the said G. L. of his goods and chattels, afterwards, to wit, on the twenty-fourth day of *August*, in the tenth year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, unjustly, fraudulently, and deceitfully did deliver unto him the said G. L. a certain quantity of meal and bran mixed, to wit, nineteen bushels of meal and bran mixed, other and different than the true, real, and proper meal, bran, or produce of, and coming from, the aforesaid residue of the said twenty * bushels of wheat, so received by him the said Z. E. of and from the said G. L. as aforesaid, after having taken, deducted, accepted, and received to the use of him the said Z. E. ^b one bushel, parcel of the said twenty bushels of wheat, as and for such toll or reward, for the purpose and on the

^a If a miller be indicted for extortion in taking his toll, see the difference between *customary* mills and those newly erected, 1 *Ld. Raym.* 149.

^b As the usage or custom may be. *Vide Dalt.* (edit. 1727) 367. 1 *Ld. Raym.* 149.

M U R D E R.

occasion in that behalf aforesaid; and then and there, to wit, on the same day and year last aforesaid, at the parish aforesaid, in the county aforesaid, did unlawfully, falsely, fraudulently, and deceitfully pretend and intimate to the said *G. L.* that the said quantity of meal and bran, so delivered by him the said *Z. E.* to the said *G. L.* as aforesaid, was good, true, sound, and wholesome meal and bran, produced and yielded from, and parcel of, the aforesaid residue of the said twenty bushels of wheat so received by him the said *Z. E.* for the purpose in that behalf aforesaid: whereas in truth and in fact Averments. the said quantity of meal and bran, so delivered by the said *Z. E.* to the said *G. L.* as aforesaid, was not the produce or quality of the said wheat so received by him the said *Z. E.* of the said *G. L.* for the purpose in that behalf aforesaid; and whereas in truth and in fact the said quantity of meal and bran so delivered by the said *Z. E.* to the said *G. L.* as aforesaid, at the time of such delivery of the same, was, and still is, musty, sour, damaged, and unwholesome, and wholly unfit and improper to be used for the food ^{*} and sustenance of the said *G. L.* and his family, or any other person whatsoever, and therefore of little or no use or value to the said *G. L.* and whereas in truth and in fact he the said *Z. E.* hath not, in any other manner whatsoever, hitherto accounted with the said *G. L.* for the said twenty bushels of wheat, or made or given him any other satisfaction for the same, to the great damage, impoverishment, injury, and deception of the said *G. L.* to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a [* 438]

Conclusion.

M U R D E R.

Indictment for murder by casting a stone.

Gloucestershire. **T**HE jurors for our lord the king upon their oath present, That *C. B.* late of the parish of *Harecomb*, in the county of *Gloucester*, labourer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the third day of *May*, in the twenty-ninth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *M.* the wife of *M. H.* in the peace of ^{*} God and our said lord the king then and there being, feloniously, wilfully, and of his malice aforethought did make an assault; and that the said *C. B.* a certain stone, of ^a no value, which he the said *C. B.* in his right ^b hand then and there had and held, in and upon the right side of the head, near the right temple, of her the said *M.* then and there feloniously, wilfully, and of his malice aforethought did cast and throw; and that the said *C. B.* with the stone aforesaid, so as aforesaid cast and thrown, the afore-

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^a Changing corn by a miller, and returning bad corn instead of it, is punishable by indictment; for, being in the way of trade, it is deemed an offence against the public. 1 *Haw.* (6th edit.) 344.

As to taking toll by a miller, *vide Dalt.* (edit. 1727) 367. *Vide* also the doctrine under "Deceit," *ante*, 283, 301, 314.

^a If the weapon be of no value, it should be so expressed; for the township shall be charged for the value, &c. if delivered to them. 2 *H. H.* 185. See the note under the next precedent, page 441.

^b *Vide Cotton's case, Gro. Eliz.* 738.

said

PRECEDENTS of INDICTMENTS.

Languished and died in the same parish.

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said *M.* in and upon the right side of the head, near the right temple, of her the said *M.* then and there feloniously, wilfully, and of his malice aforethought did strike, penetrate, and wound; giving to the said *M.* by the casting and throwing of the stone aforesaid, in and upon the right side of the head, near the right temple, of her the said *M.* one mortal wound, of the length of one inch, and of the depth of one inch, of which said mortal wound she the said *M.* from the said third day of *July*, in the year aforesaid, until the tenth day of the same month of *July*, in the same year, at the parish aforesaid, in the county aforesaid, did ^a languish, and languishing did live; on which said tenth day of *July*, in the year aforesaid, the said *M.* at the parish aforesaid, in the county aforesaid, of the mortal wound aforesaid died: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *C. B.* her the said *M. H.* in manner and form aforesaid, feloniously, wilfully, and of his malice ^{*} aforethought did kill and murder, and against the peace of our said lord the king, his crown and dignity. ^b

Indictment for felony and murder by stabbing with a knife.

[* 441]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. S.* late of the parish of *St. James*, within the liberty of *Westminster*, in the county of *Middlesex*, labourer, not having the fear of God before his eyes, but ^{*} being moved and seduced by the instigation of the devil, on the twelfth day of *October*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *J. M.* in the peace of God and our said lord the king then and there being, feloniously, wilfully, and of his malice aforethought did make an assault; and that he the said *A. S.* with a certain ^c knife, of

With a certain knife, of the value, &c.

^a *Vide Cro. Eliz.* 101, 196, 739.

^b The prisoner was tried on this indictment at *Gloucester* Summer assizes, 1789, sentenced to be hung, and his body to be dissected and anatomized.

By 25 *Geo. II.* ch. 37, "Sentence shall be pronounced immediately on persons convicted of murder, unless the court shall see reasonable cause for postponing the same; and they are to be executed the next day but one after such sentence, except the same shall happen to be the Lord's day, and in that case on the *Monday* following; but the judge may stay execution upon reasonable cause; and he may also appoint the body or bodies to be hung in chains, or anatomized."

It has been determined, that in all cases within this act the judgment for dissection and anatomizing only shall be part of the sentence; and if it shall be thought advisable, the judge may afterwards direct the hanging in chains by special order to the sheriff. *Swan and Jefferys's case, Fost.* 107.

Giving judgment of death without jurisdiction, if executed, is murder in him who commands it to be put in force. 1 *H. H.* 497.

If the sheriff, having a warrant to hang a man for felony, beheads him, this is murder; for it is an act of deliberation. 1 *H. H.* 454, 466, 501. *Vide* 3 *Inst.* 52, 211.

So if a prisoner die by reason of duress and hard usage of the gaoler, it is murder in the gaoler. 1 *H. H.* 366. 3 *Inst.* 52. And Lord *Coke* in the latter adds, that the law implies malice in respect of the cruelty; which is the reason that, if any man dies in prison, the coroner ought to sit upon his body, to the end it may be enquired of, whether he came to his death by the duress of the gaoler, or otherwise. (*a*) See the subsequent doctrine under this head, and more particularly the notes under § 53.

(*a*) *Vide* also 1 *H. H.* 432.

^c This is a *deadand* forfeited to the king, and therefore the value should be set

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of the value of sixpence, which he the said *A. S.* in his right hand then and there had and held, the said *J. M.* in and upon the left side of the belly, between the short ribs, of him the said *J. M.* then and there feloniously, wilfully, and of his malice aforethought did strike and thrust, giving to the said *J. M.* then and there, with the knife afore said, in and upon the afore said left side of the belly, between the short ribs, of him the said *J. M.* one mortal wound, of the breadth of three inches, and of the depth of six inches, of which said mortal wound the said *J. M.* from the said twelfth day of *October*, in the year afore said, until the fifteenth day of the same month of *October*, in the year afore said, at the parish afore said, in the county afore said, did languish, and languishing did live; on which said fifteenth day of *October*, in the year afore said, the said *J. M.* at the parish afore said, in the county afore said, of the said mortal wound died: and so the jurors afore said, upon their oath * afore said, do say, That the said *A. S.* the said *J. M.* in manner and form afore said, feloniously, wilfully, and of his malice aforethought did kill and murder, against the peace of our said lord the king, his crown and dignity. Did strike, &c.

Did languish, &c.

[* 442]

Indictment for felony and manslaughter by stabbing, the party slain not having stricken the slayer first, nor having any weapon drawn.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *S. B.* late of the precinct of *St. Catherine*, in the county of *Middlesex*, gentleman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the fourteenth day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the precinct afore said, in the county afore said, in and upon one *J. D.* in the peace of God and our said lord the king then and there being, feloniously, and in the fury of his mind, did make an assault; and that the said *S. B.* with a certain drawn sword, of the value of three shillings, which he the said *S. B.* in his right hand then and there had and held, the said *J. D.* in and upon the right side of the belly, near the short ribs, of him the said *J. D.* (the said *J. D.* then and there not having any weapon drawn, nor the said *J. D.* then and there having first stricken the said *S. B.*) then and there, in the fury of his mind, feloniously did strike and stab, giving unto the said *J. D.* then and there, with the sword afore said, in and upon the right side of the belly, near the short ribs, of him the said *J. D.* one mortal wound, of the breadth of four inches, and of the depth of seven inches, of which said * mortal wound he the said *J. D.* then and there instantly died: and so the jurors afore said, upon their oath afore said, do say, That the said *S. B.* him the said *J. D.* in manner and form afore said, then and there feloniously, and in the fury of his mind, did kill and slay, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. With a drawn sword, &c.

did strike and stab, &c.

[* 443]
Instant death.

set forth in the indictment; but the omission of such value will not vitiate the indictment as to the offence itself. 1 *H. H.* 419. *Vide note, ante*, 439. As to the law of *deodands*, *vide* 1 *H. H.* ch. 32; which *Lord Coke* says (3 *Inst.* 57) is grounded upon the law of God: but *Sir Michael Foster* attributes it, in a great measure, to the superstition and ignorance of ancient times. See his *Discourse on Homicide*, 265, 266.

Q

By

PRECEDENTS of INDICTMENTS.

(a) § 2.

By Stat. 1 Jac. I. ch. 8. intituled, *An act to take away the benefit of clergy for some kind of manslaughter*, it is enacted, (a) That every person and persons which shall stab or thrust any person or persons that hath not then any weapon drawn, or that hath not then first stricken the party which shall so stab or thrust, so as the person or persons so stabbed or thrust shall thereof die within the space of six months then next following, although it cannot be proved that the same was done of malice fore thought, yet the party so offending, and being thereof convicted by verdict of twelve men, confession, or otherwise, according to the laws of this realm, shall be excluded from the benefit of clergy, and suffer death as in case of wilful murder.

(b) § 3.

(b) Provided, that this act shall not extend to any person or persons which shall kill any person or persons se defendendo, or by misfortune, or in any other manner than as aforesaid; nor to any person or persons which in keeping and preserving the peace shall chance to commit manslaughter, so as the said manslaughter be not committed wittingly, willingly and of purpose, under pretext and colour of keeping the peace; nor shall extend to any person or persons which in chastising or correcting his child or servant shall, besides his or their intent and purpose, chance to commit manslaughter.

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Lord chief justice Hale says, that this statute was but provisional, because the juries were apt, upon any verbal provocation, to find the fact to be manslaughter, * and (in the words of his lordship) many who were of opinion that bare words of slighting, disdain, or contumely would not of themselves make such a provocation as to lessen the crime into manslaughter, yet were of this opinion, that if A. gives indecent language to B. and B. thereupon strikes A. but not mortally, and then A. strikes B. again, and then B. kills A. that this is but manslaughter, for the second stroke made a new provocation, and so it was but a sudden falling out; and though B. gave the first stroke, and after a blow received from A. B. gives him a mortal stroke, this is but manslaughter according to the proverb, the second blow makes the affray: and this was the opinion of his lordship, and some others. 1 H. H. 456.

The words of the statute are stab or thrust: if the stabbing or thrusting were with sword or pikestaff, it is within the statute; so it seems, if it be a shot with a pistol, or a blow with a sword or staff; yet quære, for justice Jones denied it. * Ibid. 470.

It has been usual in cases of this nature to prefer two indictments, one for murder and another upon this statute, and put the prisoner to plead to both, and to charge the jury first with the indictment of murder; and if they find it not murder, then to charge them to inquire upon the other indictment, because, if convicted upon either the offender is ousted of clergy. Ibid. 468.

The indictment, to put the prisoner from his clergy, must be specially formed, pursuant to the statute, viz. that he did with a sword &c. stab the party dead, he having no weapon drawn, nor having first stricken, otherwise it will be but a common manslaughter, and the party will have his clergy. Ibid.

The indictment need not conclude, against the form of the statute, no more than in burglary or robbery; for the statute doth not make the offence to be felony, but ousts the prisoner of his clergy, where the crime is so circumstantiated as the statute expresseth. This was

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* agreed in the case of Page and Harwood, H. 23 Car. I. B. R.

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1 H. H. 468^a But yet it doth not vitiate the indictment, though it do conclude against the form of the statute, as was adjudged in *Bradley and Banks*^b; and accordingly, for the most part, to the present day, the indictments for offences under this description conclude against the form of the statute, so it seems to be good with or without such conclusion; but it is best to follow the common usage, because every man doth not readily observe the reason of the omission of that conclusion. Ibid.

In the case of *Page and Harwood*, before cited, it was resolved, that no man is ousted of his clergy by this statute but he that actually stabs; and those who are laid in the indictment to be present, aiding and abetting in such a case, shall be admitted to the benefit of clergy; and though the indictment of such manslaughter be specially formed upon and conclude against the form of the statute, yet it is a good indictment of manslaughter against those who were present, aiding and abetting; and therefore, on such a special indictment of manslaughter upon the statute, the prisoner may be convicted of simple manslaughter, and acquitted of manslaughter upon the statute; and the indictment serves for a common manslaughter, as well as a man, upon an indictment of murder, may be acquitted of murder, and convicted of manslaughter. Ibid. 468, 469.^c

On the twenty-second of March, 14 Car. I. at Newgate sessions, David Williams was indicted specially upon this statute, for that he a certain hammer made of wood and iron, out of his right hand, against and to the forehead of Francis * Marbury, feloniously, and in the fury of his mind, did sling; and with the said hammer the said F. M. in and upon his forehead feloniously, and in the fury of his mind, did strike, stab, and thrust, (the said F. M. having no weapon drawn, nor struck first,) whereof he presently died; and so in manner and form aforesaid the said F. M. did feloniously kill and slay, against the form of the statute, &c. The prisoner pleaded Not guilty; and a special verdict was found, viz. that upon Saint David's day, the prisoner, being a Welshman, had a leek in his hat; and that there was at the same time, in waggery, a Jack-a-lent in the street, put up with a leek; and one N. R. a porter, spake to the prisoner, and, pointing to the Jack-a-lent, said, Look at your countryman; and the prisoner being therewith enraged, threw an hammer at R. to the intent feloniously to hit him; but missing him, the hammer hit F. M. whereof he died: and so the said D. W. the said F. M. with the said hammer did stab and thrust, (the said F. M. then not having any weapon drawn, nor then having first stricken the said D. W.); and it was adjudged by Bramston, Jones, and the recorder Gardiner, that D. W. was guilty of manslaughter at common law, but not against the form of the statute: so that it seems they thought this not to be a stabbing within the statute, being done with the throwing of the hammer; or at least they took the killing of F. M. which was not at all intended by D. W. to be out of the statute, though it excused him not for manslaughter at common law. 1 H. H. 469, 470.^a

Q 2

In

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^a In this case, as reported by *Style*, page 86, it is not agreed to be so: on the contrary, it was denied *per Roll*, and doubted *per Bacon*. *Vide* note in H. H. 468.

^b *Cro. Jac* 283. *Telv.* 204.

^c *Vide* Doctrine of Indictments, ante, 94, 95, 108—111.

^a Lord chief justice *Holt*, in *Marwrigde's* case, *Kel.* 131, concurred with this judgment, for that it was not such a weapon or act as is within the statute of

[* 447] * In *M.* 5 Jac. I. it was ruled, that if the party slain had a cudgel in his hand, it is a weapon drawn within this statute, and the prisoner was admitted to his clergy; but it seems it must be intended of such a cudgel as might probably do hurt, not a small riding-rod, or cane. 1 H. II. 470.

In the year 1657, at Newgate, a man was indicted upon this statute, and a special verdict found, that a bailiff, having a warrant to arrest a man, pressed early into his chamber with violence; but not mentioning his business, nor the man knowing him to be a bailiff, nor that he came to make an arrest, snatched down a sword that hanged in his chamber, and stabbed the bailiff, whereof he presently died. There was some diversity of opinion among the judges, whether this was within the statute? but at length the prisoner was admitted to his clergy; for though this case was within the words of the statute, and not within the particular exceptions, yet it was held, that such case was never intended by the statute; for the prisoner did not know but that the party came in to rob or kill him, when he thus violently broke into his chamber, without declaring his business. *Ibid.*

[* 448] * Indictment for felony and murder by shooting with a pistol, and against the aiders and assisters.

Middlesex. THE jurors for our lord the king upon their oath present, That *S. D.* late of the parish of *Hendon*, in the county of *Middlesex*, labourer, *R. S.* late of the same, labourer, and *T. S.* late of the same, labourer, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the first day of *September*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon *T. K.* in the peace of God and our said lord the king then and there being, feloniously, wilfully, and of their malice (a) *aforethought*, did make an assault; and that the said *R. S.* a certain pistol, of the value of five shillings, then and there loaded and charged with gunpowder and one leaden bullet, which pistol he the said *R. S.* in his right hand then and there had and held to, against, and upon the said *T. K.* then and there feloniously, wilfully, and of his malice *aforethought*, did shoot and discharge; and that the said *R. S.* with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder shot and sent forth as aforesaid, the aforesaid *T. K.* in and upon the left breast of him the said *T. K.* a little above the left pap of him the said *T. K.* then and there, with the leaden bullet aforesaid, out of the pistol aforesaid, by the said *R. S.* so as aforesaid shot, discharged, and sent forth, feloniously, wilfully, and of his malice *aforethought* did strike, penetrate, and wound, giving to the said

(a) *Vide* note under *Maiming*, ante, 431.

of stabbing; but he was of opinion that *David Williams* ought to have been guilty of murder, if the indictment had been so laid; for that there was not a sufficient provocation to lessen the offence to manslaughter. 1 H. II. 470, n.

a *Quere*, whether the case here meant be not *Buckner's* case, *M.* 1655, reported in *Styles*, 467? But that, as it is there stated, was not the case of a bailiff, but of a creditor, who stood at the door with a sword undrawn to keep the debtor in until he could send for a bailiff, and was killed by the debtor. *Vide* note in 1 H. II. 470. It has, however, been adjudged murder to kill a man who comes to demand a debt. *Ibid.* 455.

b *Vide* doctrine under this head, *post*, § 37, &c.

T. K.

M U R D E R.

T. K. then and there, with the leaden bullet aforesaid, so as aforesaid shot, * discharged, and sent forth out of the pistol aforesaid, by the said *R. S.* in and upon the said left breast of him the said *T. K.* a little above the left pap of him the said *T. K.* one mortal wound, of the depth of four inches, and of the breadth of half an inch, of which said mortal wound the aforesaid *T. K.* then and there instantly died; and that the aforesaid *S. D.* and *T. S.* then and there, feloniously, wilfully, and of their malice *aforethought*, were present, aiding, helping, abetting, comforting, assisting, and maintaining the said *R. S.* the felony and murder aforesaid, in manner and form aforesaid, to do and commit: and so the jurors aforesaid, do say, That the said *R. S. S. D.* and *T. S.* the said *T. K.* then and there, in manner and form aforesaid, feloniously, wilfully, and of their malice *aforethought*, did kill and murder, against the peace of our said lord the king, his crown and dignity.

[* 449]

Aiders,

*Though but one person gives the stroke, all present, aiding and assisting, are equally culpable, and deemed * principals in murder; but anciently he that struck the stroke whereof the party died was only principal, and those present, aiding and assisting, were but in the nature of accessories, and should not be put upon their trial till he that gave the stroke was attained by outlawry or judgment. 1 H. H. 437.*

* *Indictment for felony and murder, by striking, kicking, and casting on the ground, where the strokes were given in the county, and the party died in another.* ^b

[* 450]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. S.* late of *Hatfield*, in the county of *Hertford*, yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the ninth day of *September*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at *Hatfield*, aforesaid, in the said county of *Hertford*, in and upon one *S. P.* in the peace of God and our said lord the king then and there being, feloniously, wilfully, and of his malice *aforethought* did make an assault; and that the said *J. S.* with both his hands and feet the said *S. P.* to and against the ground then and there feloniously, wilfully, and of his malice *aforethought* did cast and throw; and the same *S. P.* so upon the ground lying, he the said *J. S.* with both the hands and feet of him the said *J. S.* the said *S. P.* in and upon the head, stomach, back, and sides of him the said *S. P.* then and there feloniously, wilfully, and of his malice *aforethought* did strike, beat, and kick; giving to the said *S. P.* as well by the casting and throwing of him the said *S. P.* with both the hands and feet of him the said * *J. S.* in manner aforesaid, several mortal bruises, of which several mortal bruises the said *S. P.* from the ninth day of *September*, in the year aforesaid,

[* 451]

* Therefore if *A.* gives the stroke, *C.* and *D.* being present, aiding, &c. *C.* and *D.* shall be arraigned, and receive judgment if convicted, though *A.* neither appear nor be outlawed, 1 H. H. 437.

Vide Doctrine of Indictments ante, 104, § 54, and 127, § 2; 1 H. H. ch. 34; 3 Inst. 49, 50; Rex v. Hodgson and others, Le. Cro. Ca. 6; and the doctrine after the abstract of the two next statutes, § 3. Vide also Ray's case, noted under the Riot act, 1 Geo. I. post.

^b *Vide Doctrine of Indictments, ante, 105, § 62; 106, § 67; Morgan's case, Cro. Eliz. 100, 101; Hume v. Ogle, ibid. 196; Cotton's case, ibid. 738; and Wingfield's case, ibid. 739.*

until

PRECEDENTS of INDICTMENTS.

Languished, &c.

until the first day of *October*, in the same year, as well at *Hatfield* aforesaid, in the county of *Hertford* aforesaid, as also at the parish of *Friern Barnet*, in the county of *Middlesex*, did languish, and languishing did live; on which said first day of *October*, in the said twenty-first year of the reign of our said lord the king, the said *S. P.* at the said parish of *Friern Barnet*, in the said county of *Middlesex*, of the several mortal bruises aforesaid died: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *J. S.* the said *S. P.* in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought did kill and murder, against the peace of our said lord the king, his crown and dignity^a

Touching a trial for murder where the party stricken or poisoned in the county dies in another.

By Stat. 2 & 3 *Edw. VI.* ch. 24. § 2, it is enacted, *That where any person or persons shall be feloniously stricken or poisoned in one county, and die of the same stroke or poisoning in another county, that then an indictment thereof founden by jurors of the county where the death shall happen, whether it shall be founden before the coroner, upon the sight of such dead body, or before the justices of peace, or other justices or commissioners which shall have authority to inquire of such offences, shall be as good and effectual in the law as if the stroke or poisoning had been committed and done in the same county where the party shall die, or where such indictment shall be so founden; any law or usage to the contrary notwithstanding*

Where an appeal for murder in such case shall be pursued.

§ 3. *And that the justices of gaol-delivery and oyer and terminer in the same county where such indictment at any time shall be taken, and also the justices of the King's Bench, after such indictment shall be removed before them shall and may proceed upon the same in all points as they should or ought to do in case such felonious stroke, and death thereby ensuing, or poisoning, and death thereof ensuing, had grown all in one and the same county: and that such party to whom appeal of murder shall be given by the law may commence, take, and sue appeal of murder in the same county where the party so feloniously stricken or poisoned shall die, as well against the principal and principals as against every accessory to the same offences, in whatsoever county or place the accessory or accessories shall be guilty to the same, &c. It then proceeds with giving power to the justices to hear such appeal against the accessory, in like manner and form as if the same offence had been committed in the county where such appeal shall be taken, &c*

Appeal against the accessory.

Trial of an accessory in one county for a felony done in another.

By § 4. *Where murder or felony shall be committed in one county, and any other person or persons shall be accessory or accessories in any manner of wise thereto in any other county, then an indictment found or taken in the county where such offence of accessory or ac-*

a Indictment where the party languished in different parishes, and died in the same county the strokes were given, *Gro. Cir. Aff* 471. See several other forms of indictments for murder by poison and otherwise in the Index of *Gro. Cir. Aff* 521, 522.

Indictment against a widow for drowning her own child in a pond (omitted through mistake in the Index), *ibid.* 466. She was convicted at *Worcester* Lent assizes, 1782, and afterwards executed.

(a) *Vide* Doctrine of Indictments, ante, 107.

b Though by 26 *Hen. VIII.* ch. 6, § 6, a murder committed in *Wales* may be enquired of in an adjoining (a) *English* county, yet appeals must still be brought in the proper county in *Wales*. *Soutley v. Price*, *C. o. Car* 247, which recognizes the above statute of *Edw. VI.* *Vide* also 1 *Haw.* 80, § 14; 6th edit. 121, § 14.

As an authority to support the doctrine relative to the trial of *Webb* and others, at *Hereford* Summer assizes, 1782, noted ante, 107, *vide* *Rex v. Athor senior & junior*, 1 *Strange*, 553.

cessaries

cessaries is committed or done, shall be as good and effectual in the law as if the principal offence had been committed * within the latter county: and then directs how a ^b certificate of the conviction, &c. of the principal shall be transmitted to the justices of the peace, or oyer and terminer, who shall proceed on the trial of the principal. [* 453] Certificate of conviction, &c.

By stat. 2 Geo. II. ch. 21, If any person be feloniously stricken or poisoned upon the sea, or out of England, and shall die of the same in England; or shall be feloniously stricken or poisoned in England, and die of the same on the sea, or out of England, the offenders and accessories may be indicted in the county where any such death, stroke, or poisoning shall happen. before the coroner, justices of the peace, or other justices or commissioners who shall have authority to enquire of murders; and the judges of assize, or any superior court to which the indictment shall be removed, shall be removed, shall proceed accordingly. Persons feloniously stricken or poisoned at sea, and dying in England, &c. Vide Smugglers, post.

1. Murder and Manslaughter differ not in kind or nature of the offence, but only in the degree, the former being the killing a man of malice prepense; the latter upon a sudden provocation and falling out. Therefore it is, that, upon an indictment of murder, the offender may be, and often is, acquitted of murder, and yet found guilty of manslaughter. 1 H. H. 449. Difference between murder and manslaughter.

The difference between the offences of murder and manslaughter rests in these particulars:

2. In degree and quality of the offence: for murder, as afore said, is accompanied with forethought malice, either * express or premeditated; but bare homicide is upon a sudden provocation or falling out. 1 H. H. 450. Ibid. [* 454]

3. Therefore in murder there may be accessories before as well as after, because ordinarily it is an act of deliberation, and not merely of sudden passion; but in bare homicide, or manslaughter, there can be no accessories before, though there may be accessories after; and therefore upon an indictment against A. and against B. and C. for counselling and abetting as accessories before only, and not as present, aiding and abetting (for such are principals), if A. be found guilty of manslaughter, and acquitted of murder, the accessories before are discharged. Ibid. 437, 450. ^d No accessories before the fact in manslaughter; but if abetting, &c. they are principals, as well as in murder.

4. The indictment of murder essentially requires these words: Of laying the "feloniously, and of malice aforethought, did kill and murder;" but the indictment of simple homicide is only "feloniously did kill." Ibid. [Vide 1 H. H. ch. 33] indictment, either for murder or manslaughter.

5. At common law, and by statute 25 Edw. III. ch. 4, Clergy was promiscuously allowed, as well in case of murder as of homicide or manslaughter; yet by statutes 23 Hen. VIII. ch. 1, § 3; 25 Hen. VIII. ch. § 2; 1 Edw. VI. ch. 12, § 10; 5 & 6 Edw. VI. &c. Several statutes which take away clergy, &c.

a Touching the trials of the parties concerned in the murder of Sir Thomas Overbury with (a) poison administered by one Weston in that part of the Tower which is within London, the Earl of S. F. his wife, Franklin, and Turner, being accessories before the fact in Middlesex, and Sir Gervase Helwys, lieutenant of the Tower, also being another of such accessories in London, vide 3 Inst. 49, 50, 135, 136. 1 State Tr 331. (a) Vide ante, 104, 105, § 53, 54, and from § 26 to § 31, post.

b For the form of such (b) certificate in felony, vide Cro. Cir. Aff. 127. (b) Vide ante, 126. c Indictment for a murder at sea by striking with a bucket, tried in court of Admiralty, Cro. Cir. Aff. 454 See the Index of the same book, title Piracy.

d Vide § 25. &c. post.

e Vide note under "Maiming," ante, 431.

PRECEDENTS of INDICTMENTS.

ch. 10, § 4. *Clergy is taken away from murder of malice aforethought.* 1 H. H. 450.

Malice in fact,
&c.

6. Such malice as makes the killing of a man to be murder is of two kinds: first, malice in fact; second, malice in law, or presumption in law. Malice in fact is a deliberate intention of doing some corporal harm to the person of another, whereunto by law he is not authorized. Ibid. 451.

Malice in law,
or presumed.

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7. Malice in law, or presumed malice, is of several kinds, viz. 1. In respect of the manner of homicide, when without provocation. 2. In respect to the person * killed, viz. a minister of justice in execution of his office. 3. In respect of the person killing. 1 H. H. 451.

Circumstantial
evidence of ma-
lice.

8. The evidences of malice must arise from external circumstances discovering the inward intention, as lying in wait, menacings, antecedent grudges, deliberate compassings, and such-like, which are various, according to the variety of circumstances: it must be a design to some bodily harm Ibid.

Ibid.

9. If there be an old quarrel betwixt A. and B. and they are reconciled again, and then upon a new and sudden falling out A. kills B. this is not murder; but if, upon circumstances, it appears that the reconciliation was but pretended or counterfeited, and that the hurt done was upon the score of the old malice, then it is murder Ibid. 452.

Ibid.

10. If there be malice by A. against B. and by B. against A. and they meet, and upon account of that malice A. strikes B. and B. thereupon kills A. (otherwise than in his own necessary defence) it is murder in B. but if they meet accidentally, and A. assaults B. first, and B. merely in his own defence, without any other malicious design, kills A. this is not murder in B. for it was not upon account of the former malice, but upon a new and sudden emergency for the safeguard of his life: but if A. and B. had met deliberately to fight, and A. strikes B. and pursues B. so closely, that B. in safeguard of his own life, kills A. this is murder in B. because their meeting was a compact, and an act of deliberation; and therefore all that follows thereupon is presumed to be done in pursuance thereof. Ibid. *

Self defence.

If the parties
meet delibera-
tely to fight,
&c.

[* 456]

Murder by
command, &c.

* 11. If A. commands B. to kill C. and, before the act done, repents and countermands B. and charges him not to do it, yet B. doth it, A. is not guilty; for the malicious mind of the accessory ought to continue to do ill until the act done. 3 Inst. 51. 1 H. H. 452. And though A. repent of it, but before any discharge or countermand given to B. the latter kills C. yet A. remains accessory, notwithstanding his private repentance; for inasmuch as his express counsel or command occasions the fact, he must at his peril see that he countermanded B. and so remedy, as much as in him lies, the mischief that his former command occasioned. 1 H. H. 436, 437. Vide § 25, 32, 33, 34, 35, 36. post.

Challenge to
fight after a sud-
den quarrel,
manslaughter,
&c. but if there

12. If A. and B. fall suddenly out, and they presently agree to fight in the field, and do so, and A. kills B. this is not murder, but homicide: for it is but a continuance of the sudden falling out, and

a Quare, If B. had really and truly declined the fight, and run away as far as he could (suppose half a mile), and then offered to yield, and yet A. refusing to decline the combat had attempted his death, and B. after all this killed A. in his own defence, whether it excused him from murder? But if the running away were only a pretence to save his own life, and really designed to draw out A. to kill him, it were murder. 1 H. H. 452.

MURDER.

the blood was never cooled: but if there were deliberation, as that be a deliberate they met the next day, nay, though it were the same day, if there appointment, were such a competent distance of time that in a common presumption they had time of deliberation, then it is murder. 3 Inst. 51.

1 H. H. 453.

13. A. the son of B. and C. the son of D. fall out in a field, and fight; A. is beaten, and runs home to his father all bloody; B. presently takes a staff, runs into the field, being a three quarters of a mile distant, and strikes C. that he dies; this is not murder in B because done in sudden heat and passion. Ibid. * 12 Co. Rep. 87; and strikes, &c. Cro. Jac. 296, Royley's case. [* 457]

14. A boy came into Otterly Park to steal wood, and seeing the woodward, climbed up a tree to hide himself; the woodward bade him come down, and he did so, whereupon the woodward struck him twice, then bound him to his horse's tail, and dragged him till his shoulder was broken, whereof he died: it was ruled murder, because, first, the correction was excessive; and, second, it was an act of deliberate cruelty. 1 H. H. 454, Holloway's case. Cro. Car. 131. W. Jones, 198. Kelyng, 127.

15. If a master designeth moderate correction to his servant, and accordingly useth it, and the servant by some misfortune dies thereof, this is not murder, because the law alloweth him to use moderate correction, and therefore the deliberate purpose thereof is not of malice forethought. 1 H. H. 454.

16. But if the master design an immoderate or unreasonable correction, either with respect of the measure, manner, or instrument thereof, and the servant die of the same, how (says Lord Hale) can this be excused from murder, if done with deliberation and design; or from manslaughter, if done hastily, passionately, and without deliberation? and herein consideration must be had of the manner of the provocation, the danger of the instrument which the master useth, and the age and condition of the servant that is stricken: and the like of a schoolmaster towards his scholar. Ibid. ^b

* 17. If a sheriff hath a warrant to hang a man for felony, and be beheads him, this is held murder, for it is an act of deliberation. [* 458] Sheriff must pursue the sentence.

3 Inst. 52. ^c

18. It may not be improper here to mention such persons particularly who are not chargeable with homicide.

a The case reported in *Croke James* states the distance to have been a mile; and the court there held, that if one hear "that his brother, cousin, or servant is fighting upon occasion," and he goes to the place where they are fighting (although a mile or more distant), and finding the adversary fights with him and kills him, it is not murder, but man-slaughter, it being the result of one passion, without proof of any former malice.

^b If a master, by premeditated negligence or harsh usage, cause the death of his apprentice, it is murder. *Stephen Self's case*, Le. Cro. Ca. 141. Vide also § 53, post.

Indictment for the murder of an apprentice girl, by confining and starving, Cro. Cir. Aff. 464. This opportunity is taken to inform the profession, that since the printing of that book it has been discovered the indictment should have concluded against the peace of the late king, the offence having been committed in his reign. See the Doctrine of Indictments in this work, page 137, § 69.

Indictments against the person who was executed in *Moorfields* in the year 1765, for the murder of his wife, by confining and starving, Cro. Cir. Aff. 462.

^c Vide note under the first precedent for murder, ante.

PRECEDENTS of INDICTMENTS.

Non compos mentis
As to an idiot.

19. If one that is non compot mentis^a, or an idiot, kill a man, this is no felony; for they have not knowledge of good and evil, nor can have a felonious intent, nor a will or mind to do harm; and no felony nor murder can be committed without a felonious intent and purpose. Dalt. (edit. 1727.) ch. 147.

A madman.

20. A madman is without his mind or discretion, and is only and enough punished by his madness. Co. Lit. 247.

21. There are three sorts of persons accounted non compos mentis to this purpose and the like:

A fool.

First, a fool natural, who is so from his birth, and in such a one there is no hope of recovery.

Loss of memory.

Secondly, he who was once of good and sound memory, and after (by sickness, hurt, or other accident, or visitation of God) loseth his memory.

One who has lucid intervals.

Thirdly, a lunatic who has some lucid intervals, and is sometimes of good understanding and memory, and sometimes non compos mentis. Dalt. ch. 147.

An infant.

22. If it appear by circumstances, that an infant, under the age of discretion, could distinguish between good and evil, as if one of the age of nine or ten years kill another, and hide the body, or make excuses, or hide himself, he may be convicted and condemned, and forfeit, &c. as much as if he were of full age; but * in such a case the judges will in prudence respite the execution, in order to get a pardon: and it is said, that if an infant, apparently wanting discretion, be indicted and found guilty of a felony, the judge may dismiss him without a pardon; but if it appear to the court and jury that he was doli capax, and could discern between good and evil, at the time of the offence committed, he may be convicted, and undergo judgment and execution of death, though he hath not attained the age of discretion, viz. fourteen years. 1 H. H. 20.^b H. P. C. 43. 1 Haw. 2.

and a drunkard.

23. If a man that is drunk killeth another, that is felony; for it is a voluntary ignorance in him, and inasmuch as such ignorance cometh to him by his own act and folly. Lord^c Coke calls a drunkard voluntarius dæmon, and saith, that such a one hath no privilege thereby, but what hurt or ill soever he doth, his drunkenness doth aggravate it. Dalt. (edit. 1727) 477.^d

Of a person deaf and dumb.

24. It is said that if a man born deaf and dumb killeth another, it is no felony, for he cannot know whether he doth evil or not, neither can he have a felonious intent; though it is otherwise of him who was born with those faculties, and deprived of them afterwards. Dalt. (edit. 1727) 477. But in a recent case it seems to have been the opinion of the learned judges, that though a person so born is, in contemplation of law, incapable of guilt upon a presumption of idiotism, yet such presumption may be repelled by evidence of "that capacity to understand by signs and tokens which persons thus afflicted are frequently known to possess."^e

^a Vide 5 Bac. Abr. 85, 86. 1 H. H. 434.

^b Vide note, ante, 202.

^c H. & B. Co. Lit. 247. 4 Black. Com. 25, 26.

^d Concerning homicide by self-killing, or *felo de se*, vide 1 H. H. ch. 31.

^e Elizabeth Steel's case, Le. Cro. Ca. 394. It is there said, that a prisoner mute by the visitation of God may be arraigned, tried, sentenced, and transported.

So a witness deaf and dumb may be sworn and give his testimony, if intelligence can be conveyed to and received from him by means of signs and tokens. *Ridson's case*, Le. Cro. Ca. 347.

MURDER.

• Concerning COMMANDING, COUNSELLING, OR ABETTING OF [* 460] MURDER OR MANSLAUGHTER. [Vide ante, 127, § 2.]

25. To make an abettor to a murder or homicide principal in the felony there are regularly two things requisite: first, he must be present; secondly, he must be aiding and abetting, &c. 1 H. H. Accessary before the fact in striking, &c.

438. Vide post, § 32—36.

26. In case of poisoning, he that counsels another to give poison, who puts it in execution, such counsellor, if absent, is but an accessary before the fact. 1 H. H. 435.^a Same in poisoning.

27. But he that actually gives or^b lays the poison to the intent to poison, though he be absent when it is taken by the party, yet he is principal. Ibid. Though the party laying, &c. the poison he be absent when taken.

28. So of him who persuades the party to take poison, though he be absent at the time of taking. Ibid. 431. So of him who persuades, &c.

29. If A. counsel B. to poison his wife, B. accordingly obtains poison from A. and gives it to his wife in a roasted apple, the wife gives it to a child of B. not knowing it was poison, who eats it and dies; this is murder in B. though he intended nothing to the child; and so it is if an apothecary send a potion to^c the wife, and the husband mingle poison with it, and upon some dislike of the physic the apothecary is sent for, who to justify it is wholesome voluntarily eats part of it, and is poisoned and dies; this is murder in B. though the apothecary was never intended to be hurt. 1 H. H. 436. Where the party poisoned is other than was intended.

[* 461]

30. But he who was absent, and counselled the poisoning of the wife, was not accessary to the murder of the child, because as to such adviser the command shall not be construed further than as to the person intended by him. Ibid. The adviser is answerable only for the party intended by him.

31. It appeared in evidence on the trials of the parties concerned in the murder of Sir Thomas Overbury, in the Tower, that Franklin, the physician, had prepared divers poisons other than were contained in the indictments, viz. the powders of diamonds and spiders, lapis causticus and cantharides; and it was resolved, that the laying of any poison in the indictment was sufficient to maintain it; for the substance was, whether the party was poisoned or not. 3 Inst. 49, 50, 135, 136. Vide Doctrine of Indictments, ante, 104, 105, § 53, 54. Mistaking the sort of poison will not vitiate the indictment.

32. In case of murder, he who counsels or commands before the fact is but an accessary, if he be absent at the time such fact was committed, and not a principal. 1 H. H. 435.^c Vide ante, § 11. Absence of the party counselling, &c.

33. If a man be present, and not aiding or abetting to the felony, he is neither principal nor accessary. 1 H. H. 439.^d Presence of a person not aiding, &c.

^a This is the case of poisoning Sir Thomas Overbury, in which the Earl of S. and his countess (amongst others) are said to be accessaries before the fact; and they received judgment of death, &c. 3 Inst. 49, 50.

^b Indictment for murder by poisoning, laying the offence with two counts, viz. 1st. for placing the poison in a situation so as to be mistaken for medicine prescribed for the person poisoned; 2d. for mixing the poison, and leaving it in the room where the deceased lay, with intent, &c. *Cro. Cir. Ass.* 438.

^c Except in some cases of poisoning, as before mentioned. *Vide* 1 H. H. 439; ante, § 27, 28.

^d But if A. comes and kills a man, and B. runs with an intent to assist him, if there should be occasion, though *de facto* he doth nothing, yet he is principal, being present as well as A. 1 H. H. 439.

PRECEDENTS of INDICTMENTS.

Those said to be present, though in a different part of the house, &c.

[* 462]
Implication of the presence of him who is at some distance, &c.

Those of an unlawful party not actually abetting.

34. *If divers persons meet to make an affray, &c. and are of the same party, in the same house, but are in several rooms thereof, and a person be killed in one* of such rooms, those who are of that party assembled for the same purpose, though in other rooms of the house, are said to be present.* 1 H. H. 439.

35. *Lord Dacre and divers others came to steal deer in the park of one Pelham Rayden, and one of the company killed the keeper in the park; Lord Dacre and the rest of the company being in other parts of the park, it was ruled, that it was murder in them all, and they died for it.* Ibid.

36. *If many come together on an unlawful design, and one of them kill an individual of the adverse party in pursuance of such design, without the abetment of the rest of his companions to the homicide, none are guilty but those who struck, or actually abetted.* 1 H. H. 444^a [See further as to this part of the subject 1 H. H. ch. 34, and *Fost. Index*, title *Accessaries*.]

Touching the MURDER OF OFFICERS and their ASSISTANTS executing PROCESS.

As to legal and illegal process.

[* 463]

As to erroneous process.

When a warrant must be shewn, if demanded.

When it need not be shewn, though demanded.

As to breaking open doors to arrest, &c.

37. *When a minister of justice, as a bailiff, constable, or watchman, &c. is killed in the execution of his office under legal process, it is murder: but if a sheriff's bailiff comes to execute a process, and hath* not a^b lawful warrant, and is killed, it is but manslaughter, and not murder.* 1 H. H. 457.

38. *But if a process issuing out of a court of record to a serjeant at mace, sheriff, or other minister be erroneous, as if a capias had issued when a distringas should issue, yet the killing of such a minister in the execution of that process is murder, although he execute it in the^c night.* Ibid. Cro. Jac. 280.

39. *If a warrant issue from a justice of peace to a private person to arrest for felony or any other matter, he is not bound to shew such warrant, unless it be demanded, and then he must shew it.* 2 H. H. 116.

40. *But if it be directed to a known officer, as the sheriff, who is a known officer in the county, or to a constable, who is a known officer in the vill, he is not bound to shew his warrant, though demanded.* Ibid. 1 Haw. (6th edit.) 130. Vide *Baker's case*, Le. Cro. Ca. 115.

41. *If a man be legally arrested, and then escapes from the officer, and takes shelter, though in his own house, the officer, upon fresh pursuit, may break open the door, and retake him; but he*

^a On an indictment for murder, if the jury find a special verdict, it is necessary, in order to affect the principals in the second degree, to state either, first, that they were actually present; or, secondly, some acts done by them at the very time, which unavoidably shew that they were present; or, thirdly, that they were of the same party, on the same pursuit, and under the same engagements and expectation of mutual defence, with the person who did the fact. *Rex v. John Borthwick and others*, Dougl. (1st edit.) 197. Vide *Rex v. Hodgson and others*, Le. Cro. Ca. 6, and the note in 1 Haw. (6th edit.) 128.

^b Vide 1 Haw. (6th edit.) 129, 130, 131, and § 44, 45, *post*.

^c A bailiff, in the execution of *mesne* process, may break open the door of a lodger, having first gained peaceable entrance at the outward door of the house. *Lee v. Ganfel*, Cowp. 1.

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must first give ^a notice of his business, and demand, and be refused admission. 1 H. H. 459; Post. 136; 2 H. H. *116, 117; [* 464] 2 Haw. 86, 87; 6th edit. 138. Vide § 46, 47, post.

42. Upon a warrant to search for stolen goods the door cannot be broke open; for though it be for the king, yet the law enables not the breaking of houses in all cases for the ^b king; and therefore the entry to search by such a warrant must be per ostia aperta. 2 H. H. 116. Vide 12 Car. II. ch. 19, enabling officers to break open houses to search for contraband goods, in case admission be refused.

43. It is said, that upon a warrant against a felon, or one who hath dangerously wounded another, or for surety of the peace or good behaviour, the constable may break open the door where the offender is; and so may the sheriff or his bailiff upon a capias utlagatum, capias pro fine, or ^c other process for the king, if not opened on demand. 1 H. H. 459.

44. Those who come to the assistance of an officer, though not specially called thereunto, are under the same protection as persons called to his assistance by name. Ibid. 463.

45. Where a man who had been arrested by the artful contrivance of an officer upon civil process (that of the warrant having been filled up after it had been sealed) obliged the officer to depart by snapping a pistol at him three times, but the officer returning to the house, accompanied by the plaintiff and the attorney, and all the three attempting to force in, the man within fired a gun through the door, and shot the attorney, it was ruled manslaughter. 1 Haw. (6th edit.) 130, and the authorities there cited.

46. It seems be that arrests as a private man, and barely upon suspicion of felony, cannot justify the breaking open of doors to arrest the party suspected, ^{*} but he doth it at his peril, viz. if in truth he be a felon, then it is justifiable; otherwise if he be innocent upon a reasonable cause of ^a suspicion: but if the door of the house be open, such private person may enter and make the arrest in the house. ^{*} 4 Inst. 177, 178. 2 H. H. 82.

47. In case of a known felony done by the party, or where a felony is done, and a constable comes and demands entrance upon a complaint to him, or by a justice of peace's warrant, or upon hue and cry, the doors may be broke open upon notice and demand of entrance and refusal. 2 H. H. 82. [For further information as to arrests by officers and private persons, and death ensues, &c. vide 2 H. H. ch. 10, 11.]

^a No precise form of words is required to be used in giving notice, as it is sufficient if the party be made acquainted that the officer does not come in as a mere trespasser, but claims to act under a proper authority, provided that he had, in fact, a legal warrant; and where the magistrate hath jurisdiction, the legality of his warrant will never depend upon the truth of the information whereupon it is grounded. 2 Haw. (6th edit.) 138, and the authorities there cited.

^b For the several instances in which it is justifiable vide 2 Haw. 86; 6th edit. 138, 139.

^c The doctrine in § 42 seems in some measure to be an exception to this part of the subject.

^d But to prevent murder, or manslaughter, a private person may break open a door. 2 H. H. 82.

PRECEDENTS of INDICTMENTS.

Touching DEATH happening through the DEFENCE of PERSONS and PROPERTY.

As to the act of a servant in defence of his master.

48. A. assaults the master, who flies as far as he can to avoid death, the servant kills A. in defence of his master; this is homicide defendendo the master, and the servant shall have a pardon of course: but if the master had not been driven to that extremity, it had been manslaughter at large in the servant, if he had no precedent malice in him. 1 H. H. 484.

Same as to master, husband, wife, or child, in defence, &c.

49. The like law for a master killing in the necessary defence of his servant, the husband in defence of his wife, the wife of her husband, the child of the parent, or the parent of the child; for the act of the assistant shall have the same construction, in such cases, as the act of the party assisted should have had if it had been done by himself, as they are in a mutual relation one to another. Ibid.

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As to the act of a person in defence of a traveller, &c.

* 50. If A. be travelling, and B. comes to rob him, and C. falls into company with them, he may kill B. in defence of A. and therefore much more if he come to kill him, and such his intent be apparent; for in such case of a felony attempted, as well as of a felony committed, every man is thus far an officer, that at least his killing of the attempter, in case of necessity puts him in the condition of *le defendendo* in defending his neighbour. 1 H. H. 484, 485.

Acts of third persons in defence of houses and property, &c.

51. If A. had attempted a burglary upon the house of B. to the intent to steal, or to kill him, or had attempted to burn his house, and B. or any of his servants, or any within his house, had shot and killed A. this had not been so much as felony, nor had he forfeited ought for it; for B. might justify the assembling of persons for the safeguard of his house: but it is otherwise in case of a trespassable entry into the house, claiming a title, and not to commit felony. Ibid. 487.

Justifiable homicide by the party, or the father or husband, &c. in attempting to commit a rape or adultery.

52. A. makes an assault upon B. a woman or maid, with intent to ravish her; she kills him in the attempt: it is *le defendendo*, because he intended to commit a felony: and so it is if C. the husband or father of B. had killed him in the attempt, if it could not be otherwise prevented; but if it might be otherwise prevented, it is manslaughter, and therefore circumstances must guide in such cases. Ibid. 485. For further information under this description of homicide, vide 1 H. H. ch. 40. Touching involuntary homicide, that is to say, by chance-medley, or killing *per infortunium*, *ibid.* ch. 39, and *test.* Index, titles *Homicide* and *Manslaughter*.]

SEVERAL WAYS in which MURDER may be COMMITTED.

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53. There are several ways of killing: 1. By exposing a sick or weak person, or infant, unto the cold, to the intent to destroy him, whereof he dies; 2. By laying an impotent person abroad, so that he may be exposed to and receive mortal harm, as laying an infant in an orchard, and covering it with leaves, whereby a kite strikes it, and kills it; 3. By imprisoning a man so strictly that he dies.

a A woman was arraigned and executed for this offence. *Dalt.* (edit. 1727) 469.

b A gaoler, knowing a prisoner to be infected with an epidemic distemper, confines another prisoner, against his will, in the same room with him, by which he catches the infection, of which the gaoler had notice, and the prisoner dies; this is felonious killing: so to confine a prisoner in a low, damp, unwhole-

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dies.^a 4. By ^bstarving or famine; 5. By wounding or blows; 6. By poisoning; 7. By laying noisome and poisonous filth at a man's door with an intent by a poisonous air to poison him; 8. By strangling or suffocation. 1 H. H. 431, 432. So if a man persuades another to kill himself, and be present when he doth so, this is murder in the persuader. Dalt. (edit. 1727) 469.

* Touching the TIME OF DEATH, viz. that which has relation [* 468] to a YEAR and a DAY.

54. It is agreed, that no person shall be adjudged by any act ^{Death of the party stricken within a year and a day.} whether to kill another, who doth not die thereof within a year and a day after. 1 Haw. (6th edit.) 119.

55. If a man give another a stroke, which is ~~not in itself~~ so mortal but that with good care he might be cured, it is homicide or murder, as the case is. 1 H. H. 428. Vide also 1 Haw. (6th edit.) 119.

56. But if the wound or hurt be not mortal, but with ill applications by the party, or those about him, of unwholesome salves or medicines, the party dies, if it can clearly appear that this medicine, and not the wound, was the cause of his death, it seems it is not homicide; but then that must appear clearly and certainly to be so. 1 H. H. 428. [See the same book, 428, 429, for further information on this subject.] The wound not mortal, and unwholesome medicines applied, &c.

57. If the stroke or poison, &c. be given the first day of January, the year shall end the last day of December; for though the stroke or poison, &c. were given in the afternoon of the first day of January, yet that shall be accounted a whole day; for regularly the law makes no fraction of a day, and the day was added that there might be a whole year at least after the stroke or poison, &c. and if the party die after that time, it cannot be discerned (as the law presumes) whether he died of the stroke or poison, &c. or of a natural death. 3 Inst. 53.^c How the year and a day shall be computed.

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unwholesome room, not allowing him the common conveniencies which nature requires, by which the habits of his constitution are so affected as to produce a distemper of which he dies; this also is felonious homicide.—For although the law invests gaolers with all necessary powers for the interest of the commonwealth, they are not to behave with the least degree of wanton cruelty to their prisoners; and these are deliberate acts of cruelty, and enormous violations of the trust the law reposes in its ministers of justice. 1 Haw. (6th edit.) 119, and the authorities there cited. Vide note under the first precedent for murder, ante, 440.

^a Vide same note, 440.

If any one, who assumes to take care of another, refuses necessary subsistence, or by any other severity, though not of a nature to produce immediate death, as by putting the party in such a situation as may possibly be dangerous to life or health, and death actually and clearly ensues in consequence thereof, it is murder: and this mode of killing is of the most aggravated kind, because a long time must unavoidably intervene before the death can happen, &c. 1 Haw. (6th edit.) 119. Vide also Dalt. (edit. 1727) 469, and the note under § 16, ante, 457.

^c For the Doctrine of appeal see that title in the Indexes of 2 H. H. 2 Appeal of murder. Haw. and 3 Inst.

Where the king can and cannot pardon an appeal, vide 3 Inst. 237.—Proceedings on an appeal, viz. the declaration:oyer of the writ and its return; the writ and return set forth; demurrer; issue thereon; and joinder in demurrer, 3 Lord Raym. 101, &c.

See

Indictment for having naval stores found in one's custody.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. John, Wapping*, in the county of *Middlesex*, labourer, and *C. D.* late of the same, labourer, on the twelfth day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. being persons of evil name and fame, and of dishonest conversation, and then or at any time before not being contractors, nor either of them then or at any time before being a contractor, with, or authorized by, the principal officers or commissioners of our said lord the king of the navy, ordnance, or victuallers, or victualling office, for the use of our said lord the king, to make any stores of war, or naval stores whatsoever, with the marks usually used to and marked upon our said lord the king's said * warlike and naval ordnance stores, nor then, nor either of them then, being retained or employed by any such contractor for the use in that behalf aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, then and there unlawfully had in the custody and possession of them the said *A. B.* and *C. D.* a certain quantity of *cordage*, containing in length seventy yards, and in thickness three inches and upwards, of the value of twenty pounds of lawful money of *Great-Britain*, which said quantity of *cordage* then and there was wrought with a white thread, laid the contrary way, (being the mark with which *cordage* of that dimension, being warlike and naval stores of our said lord the king, and other such warlike and naval stores, then and before usually were and yet are marked,) against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said quantity of *cordage* (being of the goods and warlike and naval stores of our said lord the king, and so as aforesaid wrought and marked) then and there was found in the custody and possession of them the said *A. B.* and *C. D.* (they the said *A. B.* and *C. D.* not being such contractor, nor either of them being such contractor, nor retained or employed, nor either of them being retained or employed, as aforesaid, as by the statute in such case made and provided is required), to the diminution of the warlike and naval stores of our said lord the king, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

See the case, arguments and determination thereon, 1 Lord Raym. 20. Discontinuance in an *appeal* not aided by an appearance after, *Yelv.* 204. Not guilty to the murder is a good plea in an *appeal*, *ibid.* 205.

An *appeal* was abated by the court, *ex officio*, because the appellant, being under age, brought it in person. 3 Lord Raym. 536. The form of abating it, *ibid.* The law on it, 2 Lord Raym. 1288. But a new *appeal* was filed against the defendant as in *custody* of the *marshal*, &c. for which see 2 Lord Raym. 1291.

Vide 5 Burr. Rep. 2643. 2 Black. Rep. 710.

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* *If canvass.*

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One piece of wrought canvass, containing twenty yards in length, of the value of , which said piece of canvass was marked with a blue streak in the middle (being the mark with which the canvass and other such warlike, &c. [*as before.*])

If iron or brass marked with the broad arrow.

One iron bolt, of the value of three shillings, which said iron bolt was marked with the broad arrow (being the mark with which the iron bolts and other such warlike, &c. [*as before.*])

So of nails, hinges, padlocks, and other such like, &c. [*as the fact may be.*]

By stat. 9 & 10 Will. III. ch. 41, § 1 and 2, it is enacted, *That such person or persons in whose custody, possession, or keeping such goods or stores (marked as in the statute is mentioned) shall be found, not being employed, as in the statute is likewise mentioned, and recited in the above indictment, and such person or persons who shall conceal such goods or stores, marked as aforesaid, being indicted and convicted of such concealment, or of the having such goods found in his custody, possession, or keeping, shall forfeit such goods, and the sum of two hundred pounds, together with the costs of prosecution, one moiety to his majesty, and the other moiety to the informer, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, and shall also suffer imprisonment until payment and performance of the said forfeiture, unless such person shall, upon his trial, produce a certificate under the hands* of three or more of his majesty's principal officers or commissioners of the navy, or ordnance, or victuallers, expressing the numbers, quantities, or weight of such goods as he or she shall be then indicted for, and the occasion and reason of such goods coming to his or her hands and possession.*

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By the same statute, § 1, *Any person or persons who shall make any stores of war, or naval stores whatever, with the marks usually used to and marked upon his majesty's said warlike and naval or ordnance stores, shall forfeit such goods, and the sum of two hundred pounds, together with costs of suit, to be recovered as aforesaid.*

By stat. 9 Geo. I. ch 8, § 3, (after reciting the title of the above statute of Will. III. and the purport of it, and that it was necessary to give power to mitigate the said penalties, and to explain and amend the said act.) it is enacted, *That if any person or persons shall be lawfully convicted of having in his, her, or their custody, any timber, thick stuff, or plank, marked with the broad arrow by stamp, brand, or otherwise, or of concealing any timber, thick stuff, or plank, so marked, every such person so offending shall suffer, forfeit, and pay, as for having, keeping, or concealing any other warlike, naval, or ordnance stores, contrary to the said recited act.*

And by the said stat. 9 Geo. I. § 4, it is also enacted, *That it shall and may be lawful to and for any judge, justice, or justices, before whom any offender or offenders shall be convicted of any of the crimes or offences before recited, enacted, or mentioned in this*

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*a*ct, to mitigate the penalty for the same, as he or they shall see cause, and to commit the offenders so convicted to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize, until payment be made of the penalty and forfeiture imposed by this or the said former act, or mitigated as aforesaid, or to punish such * offenders corporally, by causing him, her, or them to be publickly whipped, or committed to some publick work-house, there to be kept to hard labour for the space of six months, or a less time, as to such judge, justice, or justices in his or their discretion shall seem meet.

By 17 Geo. II. ch. 40, § 10, Power is given to justices of assize and justices of the peace to hear, try, and determine, by indictment or otherwise, the offences against the above-mentioned acts.

John Hand was tried and convicted in B. R. Trinity term, 4 Geo. III. Ann Fenwick was also tried and convicted at the Epiphany, quarter session for Middlesex, 19 Geo. III. ^a

By stat. 12 Geo. III. ch. 24, § 1, it is enacted, That if any person or persons shall, either within this realm, or in any of the islands, countries, forts, or places thereunto belonging, wilfully and maliciously set on fire, burnt, or otherwise destroy, or cause to be set on fire, burnt, or otherwise destroyed, or aid, procure, abet, or assist in the setting on fire, or burning, or otherwise destroying, of any of his majesty's ships or vessels of war, whether the said ships or vessels of war be on float or building, or begun to be built, in any of his majesty's dock-yards, or building or repairing by contract in any private yards, for the use of his majesty, or any of his majesty's arsenals, magazines, ^b dock-yards, rope-yards, victualling-offices, or any of the buildings erected therein, or belonging thereto; or any timber or materials there placed for building, repairing, or fitting out of ships or vessels; or any of his majesty's military, naval, or victualling stores, or other ammunition of war, or any place or places * where any such military, naval, or victualling stores, or other ammunition of war, is, are, or shall be kept, placed, or deposited; that then the person or persons guilty of any such offence, being thereof convicted in due form of law, shall be adjudged guilty of felony, without benefit of clergy.

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By § 2, Persons of the above description, offending out of this realm, may be tried in any shire, &c. within the realm.

N O T E S.

Indictment for felony in stealing a promissory note.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That C. D. late of the parish of St. Andrew, Holborn, in the county of Middlesex, yeoman, on the second day of September, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. at the parish aforesaid, in the county aforesaid, feloniously did steal, take, and carry away one promissory note, signed under the hand of G. C. bearing date the sixteenth day of November, in the year of

^a As mentioned in the fifth edition.

^b Indictment on this statute against the person commonly called John the Painter, otherwise Jack the Painter, for setting fire to Portsmouth dock-yard, and destroying naval stores. *Cro. Cir. Aff.* 24.

NOTES.

our Lord one thousand seven hundred and eighty, of the value of sixty-five pounds, of lawful money of *Great-Britain*, by which said note the said *G. C.* did promise to pay *W. C.* or order, sixty-five pounds, three months after date, the said note, at the time of committing the felony aforesaid, being the property of one *A. B.* and the said sum of sixty-five pounds, payable and secured by the same promissory note, being then due and unsatisfied to the said *A. B.* the proprietor thereof, against the form of the statute in such case made and provided, and * against the peace of our said lord the king, his crown and dignity.

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Indictment for stealing a bill of exchange and a bank-note.

Town and county of Southampton. **T**HE jurors for our lord the king upon their oath present, That *G. W.* late of the parish of *St. M.* in the said town and county of *S.* gentleman, on the fifteenth day of *September*, in the seventeenth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the town and county aforesaid, feloniously did steal, take, and carry away one bill of exchange, called an inland bill of exchange, of the value of ten pounds, signed and subscribed by *J. F.* bearing date at *Oxford*, the twelfth day of *September*, in the year of our Lord one thousand seven hundred and seventy-seven, directed to ^a Messrs. *R. St. Paul's church-yard, London*, for the payment of ten pounds to *J. L.* by the name and description of Mr. *J. L.* or order, three days after sight, and which said bill of exchange was indorsed *J. L.* the said bill of exchange, at the time of committing the felony aforesaid, being the property of *C. L.* and the said sum of ten pounds, payable and secured by and upon the same bill of exchange, then, to wit, at the time of committing the felony aforesaid, being due and unsatisfied to the said *C. L.* the proprietor thereof, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *G. W.* afterwards, to wit, on the said fifteenth day of *September*, in the said seventeenth year of the reign of our said lord the king, with force and arms, at the parish of *St. M.* aforesaid, in the town and county aforesaid, feloniously did steal, take, and carry away one promissory note, called a bank-note, of the value of ten pounds, of lawful money of *Great-Britain*, marked No. *K. 625*, dated *London*, the 28th day of *March*, 1775, and signed by *J. W.* for the governor and company of the Bank of *England*, by which said note the said *J. W.* for the said governor and company of the bank of *England*, did promise to pay to *W. D.* esquire, and ^b Co. or bearer, on demand, the sum of ten pounds, the said note, at the time of committing the felony last aforesaid, being the property of the said *C. L.* and the said sum of ten pounds, payable and secured by and upon the said note, then, to wit, at the time of committing the felony last aforesaid, being due and unsatisfied to the said *C. L.* the proprietor thereof, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

First count, on the bill.

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Second count, on the note.

By stat. 2 Geo. II. ch. 25. § 3, intituled, *An act for the more effectual preventing and further punishment of forgery, perjury, and*

^a In an indictment of felony, the description of a partnership to a common intent is sufficient. *Lavell's case*, Le. Cro. Ca. 239.

^b Vide *Lavell's case*, Le. Cro. Ca. 239.

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subornation of perjury ; and to make it felony to steal bonds, notes, or other securities for payment of money, it is enacted, That if any person or persons, after the twenty-ninth day of June, shall steal, or take by robbery, any exchequer orders or tallies, or other orders, intitling any other person or persons to any annuity, or share of any parliamentary funds, or any exchequer bills, bank-notes, * South Sea bonds, East-India bonds, dividend warrants of the Bank, South-Sea company, society or corporation bills of exchange, navy bills or debentures, goldsmiths notes for payment of money, or other bonds or warrants, bills or promissory notes, for the payment of any money, being the property of any other person or persons, or of any corporation, notwithstanding any of the said particulars are termed in law a chose in action ^a, it shall be deemed and construed to be felony of the same nature, and in the same degree, and with or without the benefit of clergy, in the same manner as it would have been if the offender had stolen, or taken by robbery, any other goods of like value, with the money due on such orders, tallies, bills, bonds, warrants, debentures, or notes, or secured thereby, and remaining unsatisfied ; and such offender shall suffer such punishment as he or she should or might have done, if he or she had stolen other goods of the like value, with the monies due on such orders, tallies, bonds, bills, warrants, debentures, or notes respectively, or secured thereby, and remaining unsatisfied ; any law to the contrary thereof in anywise used notwithstanding.

§ 4. This act extends not to ^b Scotland, nor works corruption of blood, &c.

Made perpetual by stat. 9 Geo. II. ch. 18.

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* N U I S A N C E.

1. Indictment against a butcher for using his shop as a slaughter-house in a public market.

London. **T**HE jurors for our lord the king upon their oath present, That *H. H.* late of London, butcher, on the twelfth day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and on divers other days and times then before, at London, to wit, in the parish of _____, in the ward of _____, in London aforesaid, in a certain shop of him the said *H. H.* situate and being in a common market there, called *Leadenball* market, (the said market being a common passage for all the liege subjects of our said lord the king with their goods, chattels, and merchandizes to go, return, pass, and repass at their free will and pleasure,) did unlaw-

Vide 2 Black.

Com. 397, 442.

Com. Dig. title
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2) 1 i ac. Abr.
157, 158.

a Thing in action is, when a man hath cause, or may bring an action for some duty due to him ; as an action of debt upon obligation, annuity, or rent, action of covenant or ward, trespass of goods taken away, beating, or such like ; and because they are things whereof a man is not possessed, but for recovery of them is driven to his action, they are called choses, or things in action : and those things in action which are certain the king may grant, and the grantee may have an action for them in his own name only ; but a common person cannot grant his things in action, nor the king himself his things in action, which are as uncertain as trespass, and such like. But of late merchants and others, who have bills without seals for payment of money, assign them to others, who bring actions in their own names. So it is as to promissory notes, by stat. 3 & 4 Ann. ch. 9, § 1.

^b See *Dick's case*, Le. Cro. Ca. 66.

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fully and injuriously kill and slay, and caused to be killed and slain, ten lambs, and the excrement, blood, entrails, and other filth coming from the said lambs, did then, and on the said other days and times respectively, there cause and permit to lie and remain in the said shop for a long time, to wit, for the space of five hours, on each of those days, whereby divers filthy and unwholesome smells and stenches from the excrement, blood, entrails, and other filth coming from the lambs aforesaid, then, and on the said other days and times respectively, there did arise, and the air there was thereby greatly corrupted and infected, to the great damage and common nuisance not only of all the liege subjects of our said lord the king near there * inhabiting and dwelling, but also of all other the liege subjects of our said lord the king in, by, and through the said common market and passage going, returning, passing, repassing, and labouring, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

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2. Indictment for placing putts in the river Severn, and thereby obstructing the navigation, &c.

Gloucestershire. **T**HE jurors for our lord the king upon their oath present, That the river *Severn*, that is to say, a certain part of the said river lying and being in the said county of *Gloucester*, is, and from the time whereof the memory of man is not to the contrary hath been, an ancient river, and the king's ancient and common ^a *highway* for all the liege subjects of our said lord the king and his predecessors with their ships, barges, lighters, boats, wherries, and other vessels to navigate, sail, row, pass, repass, and labour, at their own will and pleasure, without any impediment or obstruction whatsoever. And the jurors aforesaid, upon their oath aforesaid, do further present, That *S. H.* late of *Broad Oak*, in the parish of *Westbury*, in the said county, fisherman, on the first day of *January*, in the twenty-eighth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and on divers other days and times between that day and the day of the taking of the inquisition, with force and arms, at the parish of *Westbury* aforesaid, unlawfully, wilfully, and * injuriously did erect, place, fix, put, and set in the said river and king's ancient and common highway there, near a place called *Guy's Shard*, a certain snare, trap, machine, and engine for the catching and taking of fish, commonly called putts, and composed of wood, wooden stakes, and twigs; and that he the said *S. H.* on the said first day of *January*, in the year aforesaid, and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the parish aforesaid, in the county aforesaid, the said snare, trap, machine, and engine, called putts, unlawfully, wilfully, and injuriously did continue, and still doth continue, so erected, placed, fixed, put, and set in the said river and king's ancient and common highway aforesaid: by means whereof the navigation and free passage of, in, through, along, and upon the said river *Severn* and the king's ancient and common highway there, on the same day and year aforesaid, and the said other days and times, hath been, and still is, greatly straitened, obstructed, and confined, to wit, at the said parish of *Westbury*, in the

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^a A river common to all men is so called. 1 *Fluo* 201; 6th edit. 366.

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said county of *Gloucester*, so that the liege subjects of our said lord the king navigating, sailing, rowing, passing, repassing, and labouring with their ships, barges, lighters, boats, wherries, and other vessels in, through, along, and upon the said river and king's ancient and common highway there, on the same day and year aforesaid, and the said other days and times, could not, nor yet can, go, navigate, sail, row, pass, repass, and labour with their ships, barges, lighters, boats, wherries, and other vessels, upon and about their lawful and necessary affairs and occasions, in, through, along, and upon the said river and king's ancient and common highway there, in so free and uninterrupted a manner as of right they * ought, and before have been used and accustomed to do, to the great damage and common nuisance of all the liege subjects of our said lord the king navigating, sailing, rowing, passing, repassing, and labouring with their ships, barges, lighters, boats, wherries, and other vessels in, through, along, and upon the said river *Severn* and the king's ancient and common highway there, to the great obstruction of the trade and navigation of and upon the said river, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a

3. *Indictment for keeping a disorderly house.*

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. H.* late of the parish of *St. Giles* in the county of *Middlesex*, labourer, on the tenth day of *April*, in the twenty first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the parish aforesaid, in the county aforesaid, did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed, and disorderly house; and in his said house, for his own lucre and gain, certain persons, as well men as women, of evil name and fame, and of dishonest * conversation, to frequent and come together, then, and on the said other days and times, there unlawfully and wilfully did cause and procure; and the said men and women in his said house, at unlawful times, as well in the night as in the day, then, and on the said other days and times, there to be and remain, drinking, tipling, whoring, and misbehaving themselves, unlawfully and wilfully doth permit, and yet doth permit, to the great damage and common nuisance of all the liege subjects of our said lord the king there inhabiting, residing, and passing, to the evil example of all other the subjects of our said lord the king in the like case offending, and also against the peace of our said lord the king, his crown and dignity.

Although lewdness be properly punishable by the ecclesiastical law, yet the offence of keeping a bawdy-house cometh also under the cognizance of the law temporal, as a common nuisance, not only in respect of its endangering the public peace, by drawing together dissolute and debauched

^a The defendant pleaded the general issue to this indictment; upon which a traverse was made up and tried at *Gloucester* Summer assizes, 1782, when he was found guilty, but had time allowed him to remove the nuisance before judgment, &c.

persons,

persons, but also in respect of its apparent tendency to corrupt the manners of both sexes. 3 Inst. 205. 1 Haw. 196.

And offenders of this kind are punishable not only with fine and imprisonment, but also with such infamous punishment as to the court, in discretion, shall seem proper. Ibid.

* And a wife may be indicted together with her husband, and condemned to the pillory with him, for keeping a bawdy-house; for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex. 1 Haw. 2, 3.^b

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4 Indictment for digging a hole in the king's highway.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. F.* late of the parish of *St. Ann*, within the liberty of *Westminster*, in the county of *Middlesex*, yeoman, on the fourth day of *April*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in a certain street, being the king's common highway there, called *Tyburn-road*, otherwise *Oxford-street*, (used for all the king's subjects with their horses, coaches, carts, and carriages to go, return, ride, pass, repass, and labour at their free will and pleasure,) unlawfully and injuriously did dig, and cause to be dug, a certain pit, containing in circumference fifteen feet, and in depth thirteen feet; and the same pit, so as aforesaid dug, and caused to be dug, in the street and highway aforesaid, from the said fourth day of *April*, in the year aforesaid, until the ninth day of the same month, in the year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously did continue; by reason whereof the king's subjects, during the time aforesaid, could not go, return, pass, repass, * ride, and labour with their horses, coaches, carts, and carriages, in, by, and through the same street and highway, as they were wont and ought to do, without great peril and danger of their lives, to the great damage and common nuisance of all the liege subjects of our said lord the king, by, and through the same street and highway going, returning, passing, repassing, riding, and labouring, and against the peace of our said lord the king, his crown and dignity.

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5. Indictment against nightmen for laying soil in the streets.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. H.* late of the parish of *St. Paul*, *Shadwell*, in the county of *Middlesex*, labourer, and *H. A.* late of the same, labourer, on the thirtieth day of *April*, in the twenty-first

a Sir *Edward Coke* says, that before the reign of *Hen. VII.* there were eighteen of these infamous houses on the *Bank-side* in *Southwark*, who for some time forbade them: but afterwards twelve only were permitted, and had signs painted on their walls, as the *cardinal's bat*, &c. and that many wicked and common women had seated themselves in a lane called *Water-lane*, next to the house of the *Friars Carmelites*, in *Fleet-street*; which being an open and known wickedness, king *Edward* the third, to the end these *Friars* might perform their vows, one of which was to live in perpetual chastity, took order for removing these women. 3 Inst. 205.

b See the several statutes and offences relating to public houses, 1 Haw. (6th edit.) 451.

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year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, to wit, in the common street and king's highway there, called *Portland-street*, unlawfully and injuriously did pour out, discharge, place, and leave, and cause to be poured out, discharged, placed, and left, a great quantity of dung, human excrement, and other filth, by which divers hurtful and unwholesome smells and stench from the said dung, excrement, and other filth did then and there arise, and thereby the air there became and was greatly corrupted and infected, to the great damage and common nuisance of all the liege subjects of our said lord the king in, by, and through the same street and king's highway going, returning, passing, repassing, riding, and * labouring, and against the peace of our said lord the king, his crown and dignity.

6. *Indictment for placing empty drays in a common street, whereby the passage was obstructed for divers hours in each day.*

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That *H. F.* late of the parish of *St. Ann*, within the liberty of *Westminster*, in the county of *Middlesex*, labourer, on the eighth day of *March*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the king's common highway there, called *Lemon street*, unlawfully and injuriously did put and place three empty drays, and did then, and on the said other days and times, there unlawfully and injuriously permit and suffer the said empty drays respectively to be and remain in the king's common highway aforesaid for the space of divers hours, to wit, for the space of five hours, on each of the said days, whereby the king's common highway aforesaid then, and on the said other days, for and during all the said days and times on each of those days respectively, was obstructed and straitened, so that the liege subjects of our said lord the king could not then, and on the said other days and times, go, return, pass, repass, ride, and labour with their horses, coaches, carts, and carriages, in, by, and through the king's common highway aforesaid, as they ought and were wont and accustomed to do, to the great damage and common nuisance of all his majesty's liege subjects * going, returning, passing, repassing, riding, and labouring in, by, and through the king's common highway aforesaid, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.^a

^a For several Instances of common nuisances see the note in 1 *Haw.* (6th edit.) 363.

It is said, that the fears of mankind, however reasonable in some instances, will not create a nuisance: therefore it is no nuisance to erect a building for the purpose of inoculation; nor to lay bucks † in the river *Thames* in the party's own fishery. *Ibid.* and the authorities there cited. *Vide* 3 *Burr.* 1768 to 1771; 3 *Atk.* 750, 751.

† The placing of fishing-bucks, or other engines, by any person, in a navigable river, so as to obstruct the free passage of barges, &c. is certainly an indictable offence; nor can a prescription for a right which (in the exercise of it) tends to a public nuisance be supported. *Cro. Jac.* 446. *Vide* also p. 479, 481, *ante*.

Indictment

7. *Indictment for digging a horse-pond, and erecting a cistern in a common passage.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *W. C.* late of the parish of *St. Mary Matfellow*, otherwise *Whitechapel*, in the county of *Middlesex*, yeoman, on the second day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, to wit, in a certain passage and common footway there, called *Boar's Head Yard*, unlawfully and injuriously did dig and make, and cause to be dug and made, a certain horse-pond, containing in length twelve feet, in breadth six feet, and in depth six feet; and that the said *W. C.* on the said second day of *November*, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, to wit, in the same passage and common footway, unlawfully and injuriously did erect, put, and place, and cause to be erected, put, and placed, a certain wooden *cistern, containing in length five feet, and in breadth twenty inches; and that the said *W. C.* the said horse-pond, so as aforesaid dug and made, and also the said wooden cistern, so as aforesaid erected, put, and placed, from the said second day of *November*, in the year aforesaid, until the day of the taking of this inquisition, with force and arms, at the parish aforesaid, in the year aforesaid, unlawfully and injuriously did continue, and yet doth continue; by means whereof the same passage and common footway, for and during the whole time aforesaid, was so obstructed, and was, and yet is, so dangerous, that the liege subjects of our said lord the king through the same passage and common footway could not, nor yet can, go, return, pass, and repass, so freely and safely as they ought and were wont and accustomed to do, and still of right ought to do, to the great damage and common nuisance of all the liege subjects of our said lord the king through the same passage and common footway going, returning, passing, and repassing, and against the peace of our said lord the king, his crown and dignity.

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8. *Indictment at a common law against a sabbath-breaker, and prophaner of the Lord's day, in keeping open shop.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *L. H.* late of the parish of *St. Clement Danes*, in the county of *Middlesex*, butcher, on the sixth day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and continually afterwards, until the * day of the taking of this inquisition at the parish aforesaid, in the county aforesaid, was, and yet is, a common sabbath-breaker, and prophaner of the Lord's day, commonly called *Sunday*; and that the said *L. H.* on the said sixth day of *January*, in the year aforesaid, being the Lord's day, and on divers other days and times, being the Lord's day, during the time aforesaid, at the parish aforesaid, in the county aforesaid, in a certain place there, called *Clare-market*, did keep a common, public, and open shop, and in the same shop did then, and on the said other days and times, being the Lord's days, there openly and publickly did

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a *Vide* observations hereon, *post.*

sell

sell and expose to sale flesh-meat to divers persons, to the jurors afore said as yet unknown, to the evil example of all others in the like case offending, to the common nuisance of all the liege subjects of our said lord the king, and against the peace of our said lord the king, his crown and dignity.

Butchers, &c. using their trade on the Lord's day are to be proceeded against in a summary way, before a justice of peace, and upon conviction are fineable six shillings and eight-pence: but this punishment no being severe enough to deter the offenders, the method of indicting them for nuisances, in keeping open shop on the Lord's day, is constantly made use of at sessions; for the first offence they are generally fined thirteen shillings and four-pence, and so often as they offend afterwards their respective fines are doubled.

Observations.

Thus stood the precedent and the law upon the subject in the fifth edition; but in the endeavour to substantiate them by some book of authority the editor has discovered the following passages, which are here inserted for the consideration of the drawer.

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*On an indictment for exercising the trade of a butcher on a Sunday, an exception was taken, that it was not * laid to be a contra formam statuti, it being no offence at common law; but the court refused to quash it, and put the defendant to demur; and afterwards, upon demurrer, judgment was given for the defendant. Rex v. Brotherton, 1 Stra. 702.*

A person can commit but one offence on the same day, by "exercising his ordinary calling on a Sunday," contrary to the stat. 29 Car. II. ch. 7: and if a justice of the peace proceed to convict him in more than one penalty for the same day, it is an excess of jurisdiction, for which an action will lie before the convictions are quashed. Crepps versus Durden & al. Cowp. 640.

9. *Indictment for putting and placing two carts for the selling of pease in a public street.*

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That K. L. late of the parish of St. Mary Matfellow, otherwise Whitechapel, in the county of Middlesex, labourer, on the twelfth day of June, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. with force and arms, at the parish afore said, in the county afore said, to wit, in the common and public street there, called Carnaby-street, (the same street being the king's common highway there from time * whereof the memory of man is not to the contrary, used by all the subjects of our said lord the king and his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, repass, ride, and labour at their free will and pleasure,) unlawfully and injuriously did put and place, and cause and procure to be put and placed, two carts, for the selling and exposing to sale of pease in the shells; and the said carts in the same street

a *Vide Com. Dig. title Temps, (B. 3.) and statutes 3 Car. I. ch. 1. 29 Car. II. ch. 7. It is to be observed, that the first statute enacts, that "if any butcher shall kill or sell any victual upon a Sunday, he shall forfeit six shillings and eight-pence, recoverable (amongst other things) by bill, plaint, or information," but 29 Car. II. positively prohibits "all tradesmen, artificers, working men, labourers, or other persons whatsoever, from exercising any worldly labour, &c. on that day:" therefore vide "Doctrine of Indictments," ante, 95, § 5 & 6.*

and

and common highway, on the day and year aforesaid, for the space of three hours, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously did cause to be and remain; whereby the said street and common highway, during the time last aforesaid, was very much obstructed and straitened, so that the liege subjects of our said lord the king could not through the same street and common highway, during the time in that behalf aforesaid, go, return, pass, repass, ride, and labour, with their horses, coaches, carts, and carriages, as they ought and were wont and accustomed to do, to the great damage and common nuisance of all the liege subjects of our said lord the king in, by, and through the same street and common highway going, passing, repassing, riding, and labouring, and against the peace of our said lord the king, his crown and dignity.

10. *Indictment for putting and placing two cart-loads of dirt and other filth in the common footway.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. J.* late of the parish of *Stebunheath*, otherwise *Stepney*, in the county of *Middlesex*, labourer, on the eleventh day of *April*, in the twenty-first year of the reign * of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in a certain ^a common footway there, leading from that part of *Mile-end-green* which is in the parish aforesaid, in the county aforesaid, towards and unto the parochial ^b church of the same parish, in the said county, did unlawfully and injuriously put, place, and lay, and cause to be put, placed, and laid, two cart-loads of dirt and other filth, and the said dirt and filth, in the said footway, from the said eleventh day of *April*, in the year aforesaid, until the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously did permit and suffer to be and remain, by reason whereof the foot-way aforesaid, during the time aforesaid, was, and yet is, greatly obstructed and straitened, so that the liege subjects of our said lord the king through the same footway could not during the time aforesaid, nor yet can, go, return, pass, repass, and labour as they ought and were wont to do, to the great damage and common nuisance of ^c all the liege subjects of our said lord the king through the same footway going, returning, passing, repassing, and labouring, and against the peace of our said lord the king, his crown and dignity.

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^a See the forms in *Cro. Cir. Ass.* 373, 379, and the doctrine in *1 Haw.* 201; 6th edit. 366, 367, § 1.

^b An indictment for a nuisance in a common footway to the church of *D.* for all the parishioners of *D.* is not good; yet it seems that if those words, viz. "for all the parishioners of *D.*" had been omitted, such an indictment might be maintained. *1 Haw.* 220, § 89; 6th edit. 422, § 89.

^c To lay it to the nuisance of divers liege subjects would be bad. *Vide Sir Rowland Hayward's case, Cro. Eliz.* 148. But the contrary will hold as to common barrators and felds, *2 Haw.* (6th edit.) 323. *Vide Doctrine* under this head, § 10, *post*.

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* 11. *Indictment for keeping hogs near a public street.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *T. T.* late of the parish of *St. Sepulchre*, in the county of *Middlesex*, labourer, on the fourth day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the parish aforesaid, in the county aforesaid, near the dwelling-houses of divers liege subjects of our said lord the king, and also near divers public streets and common highways, there did, and yet doth, keep ten hogs; and the said hogs then and there, to wit, on the said fourth day of *May*, in the year aforesaid, and on the said other days and times, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously did feed, and yet doth feed, with the offals and entrails of beasts, and other filth; by reason whereof divers noisome and unwholesome smells and stench, during the time aforesaid, did from thence there arise, and the air there was, and yet is, thereby greatly corrupted and infected, to the great damage and common nuisance not only of all the liege subjects of our said lord the king there resident and dwelling, but also to all the liege subjects of our said lord the king passing and repassing in, by, and through the said streets and common highways there, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

This is an offence at common law. 2 Lord Raymond, 1163.

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* 12. *Indictment for erecting a furnace, with a boiler, to be used for the boiling of tripe, and the offal of beasts.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. C.* late of the parish of *St. George, Hanover-square*, in the county of *Middlesex*, labourer, on the ninth day of *October*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, near the dwelling-houses of divers liege subjects of our said lord the king there, and also near divers streets and common highways there, did unlawfully and injuriously erect and set up, a certain furnace, with a boiler, to be used for boiling of tripe, and other entrails and offal of beasts; and that the said *J. C.* on the said ninth day of *October*, in the year aforesaid, and on divers other days and times between that day and the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, divers large quantities of tripe, and other entrails and offal of beasts, in the said boiler unlawfully and injuriously did boil, and yet doth boil; whereby divers noisome and unwholesome smoaks and smells did then, and on the said other days and times, from thence there arise, so that the air there was greatly corrupted and infected, to the great damage and common nuisance of all the liege subjects of our said lord the king not only near the same place inhabiting and residing, but also in and through the said common streets and highways going, returning, passing, and repassing, and against the peace of our said lord the king, his crown and dignity.

* 13. *Indiament for boiling bullocks blood for making colours.*

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. B.* late of the parish of *St. Ann*, within the liberty of *Westminster*, in the county of *Middlesex*, colourman, on the first day of *July*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the parish aforesaid, in the county aforesaid, in a certain building belonging to the dwelling-house of the said *J. B.* there situate and being, and also near the dwelling-houses of divers subjects of our said lord the king, and near divers public streets and common highways there, did unlawfully boil, and cause to be boiled, a great quantity of bullocks blood, and other filth, for the making and mixing of colours, whereby divers noisome and unwholesome smells, on the day and year aforesaid, and on the said other days and times during the time aforesaid, at the parish aforesaid, in the county aforesaid, did from thence arise, so that the air there was thereby greatly corrupted and infected, to the great damage and common nuisance of all the liege subjects of our said lord the king not only there inhabiting and residing, but also going, returning, passing, and repassing through the said streets and highways there, and against the peace of our said lord the king, his crown and dignity.

* 14. *Indiament for stopping an ancient water-course, whereby the water overflowed the adjoining highway, and damaged the same.*

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Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. C.* late of the parish of *Edmonton*, in the county of *Middlesex*, yeoman, on the sixth day of *April*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, a certain ancient water-course, adjoining to the king's highway, within the same parish, leading from the town of *Enfield*, in the county aforesaid, towards and unto the city of *London*, with gravel and other materials unlawfully and injuriously did obstruct and stop up; and the said water-course, so as aforesaid obstructed and stopped up, from the said sixth day of *April*, in the year aforesaid, until the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously hath continued, and still doth continue; by reason whereof the rain and waters that were wont and ought to flow and pass through the said water-course, on the same day and year aforesaid, and on divers other days and times afterwards between that day and the day of the taking of this inquisition, did overflow and remain in the king's common highway aforesaid, and thereby the same was, and yet is, greatly hurt, damaged, impaired, and spoiled, so that the liege subjects of our said lord the king through the same way, with their horses, coaches, carts, and carriages, then, and on the said other days and times, could not, nor yet can, go, return, pass, repass, ride, and labour as they ought and were wont to do, to the great damage and * common nuisance of all the liege subjects of our said lord the king through the same highway going, returning, passing, repassing, riding, and labouring, and against the peace of our said lord the king, his crown and dignity.

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15. *Indiament*

15. *Indictment against scavengers for not cleansing the streets.*

Surry. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. George the Martyr*, in the county of *Surry*, broker, and *C. D.* late of the same, silver-smith, on the first day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. then and long before were, and still are, scavengers within the said parish, in the county aforesaid, duly elected by the inhabitants of the said parish, diligently to supervise, order, and direct (amongst other things belonging to their office in that behalf), that all the highways, streets, and lanes in the said parish, in the county aforesaid, should be cleansed of dirt and filth; and, during the whole time aforesaid, did take upon themselves the said *A. B.* and *C. D.* the said office of such scavengers as aforesaid; and that during the time they the said *A. B.* and *C. D.* were such scavengers, to wit, on the same day and year aforesaid, and on divers other days and times, ^a as well before as afterwards, divers large quantities of dirt and filth were put, placed, and laid in and upon the said ways, streets, and lanes, by persons to the jurors aforesaid as yet unknown: * nevertheless, the said *A. B.* and *C. D.* the duty of their office in this respect neglecting, on the said first day of *January*, in the year aforesaid, and on the said other days and times respectively, at the parish aforesaid, in the county aforesaid, the common highways, streets, and lanes aforesaid did not cleanse, or cause to be cleansed, of the dirt and filth aforesaid, but then, and on the said other days and times respectively, did unlawfully and contemptuously permit and suffer, and still do permit and suffer, the said dirt and filth to be, lie, and remain in the said common highways, streets, and lanes within the parish aforesaid, in the county aforesaid, to the great damage and common nuisance as well of all the liege subjects of our said lord the king there inhabiting and residing, as of all other the liege subjects of our said lord the king there going, passing, repassing, and labouring, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. [See the conclusion of the next precedent.]

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16. *Indictment against a raker for neglecting to cleanse the streets.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *T. L.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, labourer, on the fifth day of *April*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and long before, was, and yet is, one of the rakers for the liberty of *Saffron-hill, Hatton-garden*, and *Ely-rents*, within the said parish, and during the whole time aforesaid did take upon * himself to execute the office of raker of the streets, lanes, alleys, and passages within the same liberty; and that during the time he the said *T. L.* was such raker as aforesaid, to wit, on the same day and year aforesaid, and

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^a By this mode evidence may be given of offences committed, as well before the day laid in the indictment as afterwards, until the bill is found. *Salk.* 288.

N U I S A N C E.

on divers other days and times, ^a as well before as afterwards, divers large quantities of dust, dirt, ashes, filth, and soil were put, placed, and laid in and upon the said streets, lanes, alleys, and passages, by persons to the jurors aforesaid as yet unknown; and that the said *T. L.* on the said fifth day of *April*, in the year aforesaid, and on the said other days and times respectively, at the parish aforesaid, in the county aforesaid, did unlawfully and contemptuously neglect and refuse to carry away, or cause to be carried away, the said dust, dirt, ashes, filth, and soil, from and out of the said streets, lanes, alleys, and passages, or any of them, to the great damage and common nuisance as well of all the liege subjects of our said lord the king there inhabiting and residing, as of all other the liege subjects of our said lord the king there going, passing, and labouring, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, ^b against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

It is enacted by stat. 2 *Will. & M.* stat. 2, ch. 8, § 5, *That the rakers, scavengers, or other officers thereunto appointed, every day in the week, except Sundays and other holidays, shall bring, or cause to be brought, carts, dung-pots, and other fitting carriages, into all their respective parishes, limits, precincts, streets, charges, and divisions where such carts * and carriages can pass; and, at or before their approach, by a bell, horn, or clapper, or otherwise, shall make a distinct and loud noise, and give notice to the inhabitants thereof of their coming; and make the like noise and give the like notice in every court, alley, or place unto which the said carts cannot pass; and abide and stay there a convenient time, in such sort that all persons concerned may bring forth their respective dust, dirt, ashes, filth, and soil to the respective carts and carriages so staying as aforesaid; all which the said rakers, scavengers, or other officers aforesaid shall duly carry or caused to be carried away, upon pain to forfeit forty shillings for every such offence or neglect respectively.*

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N. B. In the fifth edition this clause was inserted immediately after the preceding indictment, and therefore it must be implied that such precedent was originally framed upon the statute in question; but as it appears by the fifth and eighteenth sections of it, that the neglect here complained of is to be corrected by a fine, payable upon conviction before a justice of the peace, it is presumed that the indictment should not conclude against the statute, except the defendant can be deemed an offender independent of it, in which case such conclusion would not vitiate, as being surplusage. *Regina v. Wigg, 2 Ld. Raym. 1163.*

It seems, by the doctrine noted in page 96, that to obstruct the execution of acts of Parliament, or disobey the orders of justices, are offences at common law, and ought to conclude as such.

Per Lord Mansfield: "There is no doubt but that an indictment will lie for disobeying an order of sessions; but notwithstanding that there are two remedies given, yet it would be extremely oppressive to take the remedy by indictment, if there are no circumstances which obstruct * the proceeding in the shorter way of summary remedy" *Rex v. Robinson, 2 Burr. Rep. 804.*

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^a See the preceding indictment.

^b So alledged in the fifth edition. See the next observations.

^c Vide page 132, and prec. 8, ante.

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As there are various statutes on this subject, and it being evident that they frequently pass for different divisions in London, Westminster, and other parts of the kingdom, it will be prudent to inspect the act for the time being, and bring the offence within it. If it directs a new duty, without coupling a penalty (recoverable upon conviction before a justice of the peace) for the neglect of such duty, then it seems that the offence may conclude against the form of the statute, though it does not mention an indictment. See the Doctrine of Indictments, page 95, § 5 and 6, and 2 Lord Raym. 1164.

17. Indictment against the inhabitants of a parish for not repairing an ancient horse and foot way, commonly called a pack and prime way.

Shropshire. **T**HE jurors for our lord the king upon their oath present, That from time whereof the memory of man is not to the contrary there was, and yet is, a certain common and ancient pack and prime way, leading from the village of *Long Stanton*, in the county of *Salop*, to the village of *Ditton Priors*, in the same county, for all the liege subjects of our lord the king, and his ancestors, on horseback and on foot, to go, return, pass, ride, labour, and drive their cattle at their free will and pleasure; and that a certain part of the same common pack and prime way, situate, lying, and being within the parish of *Long Stanton*, in the county aforesaid, containing in length three hundred yards, and in breadth five yards, on the first day of *January*, in the twenty-first year of the reign of our sovereign lord *George* * the third, king of *Great-Britain*, &c. and continually afterwards, until the day of taking of this inquisition, at the parish of *Long Stanton* aforesaid, in the county aforesaid, was, and yet is, very ruinous, miry, deep, broken, and in such decay for want of due reparation and amendment of the same, that the liege subjects of our said lord the king, by the same way, with their horses and cattle, could not, during the time aforesaid, nor yet can, go, return, pass, repass, ride, and labour as they ought and were wont to do, without greater danger of their lives, and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king through the same way going, returning, passing, repassing, riding, and labouring, and against the peace of our said lord the king, his crown and dignity: and that the inhabitants of the said parish of *Long Stanton*, in the county aforesaid, the same common pack and prime way, so as aforesaid being in decay, ought to repair and amend when and so often as it should or shall be necessary.

18. Indictment for continuing a hedge, formerly erected by a person unknown, across a pack and prime way, whereby the same was totally obstructed.

Shropshire. **T**HE jurors for our lord the king upon their oath present, That from the time whereof the memory of man is not to the contrary there was, and yet is, a certain common and ancient pack and prime way, leading from the village of *Long Stanton*, in the county of *Salop*, to the village of *Ditton Priors*, in the same county, for all the liege subjects of our lord the king, and his ancestors, on horseback and on foot, to go, return, * pass, repass, ride, labour, and drive their cattle at their free will and pleasure; and that on the first day of *July*, in the twenty-first year of the reign of our sovereign lord *George* the third, king

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of Great-Britain, &c. at *Ashfield*, in the parish of *Ditton Priors* aforesaid, in the county aforesaid, a certain hedge had then before been erected and fixed across the same pack and prime way there, leading through a certain land called and known by the name of the *Barn-yard*, by certain persons (to the jurors aforesaid as yet unknown), whereby the same pack and prime way was greatly obstructed and stopped up, so that the liege subjects of our said lord the king, by the same way, with their horses and cattle, could not then go, return, pass, repass, ride, and labour as they had been used and accustomed to do time immemorial; and that *G. M.* of *Ashfield*, in the said parish of *Ditton Priors*, in the said county of *Salop*, yeoman, the said hedge, so as aforesaid erected and fixed across the same pack and prime way, from the said first day of *July*, in the year aforesaid, until the day of the taking of this inquisition, with force and arms, at *Ashfield*, in the parish of *Ditton Priors* aforesaid, in the county aforesaid, voluntarily and obstinately did uphold, maintain, and continue, whereby the same pack and prime way, during the time last aforesaid, was, and yet is, so much obstructed and stopped up, that the liege subjects of our said lord the king, during all that time, were, and still are, hindered, retarded, and obstructed in passing and repassing through the same pack and prime way there, to the great damage and common nuisance of all the liege subjects of our said lord the king through the same way going, returning, passing, repassing, riding, and labouring, to the evil example of all others in the like case offending, and * against the peace of our said lord the king, his crown and dignity. ^a

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9. *Indictment against the inhabitants of a parish for not repairing the king's common highway.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That from time whereof the memory of man is not to the contrary there was, and yet is, a certain common and ancient king's highway, leading from the town of *Hatfield*, in the county of *Hertford*, towards and unto the city of *London*, used by and for all the liege subjects of our said lord the king, and his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, repass, ride, and labour at their free will and pleasure; and that a certain part of the same king's common highway, called — *lane*, situate, lying, and being in the parish of *Fryern Barnet*, in the county of *Middlesex*, containing in length forty yards, and in breadth eight yards, on the first day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and continually afterwards, until the day of the taking of this inquisition, at the said parish of *Fryern Barnet*, in the said county of *Middlesex*, was, and yet is, very ruinous, miry, deep, broken, and in great decay for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king through the same way, with their horses, coaches, carts, and carriages, could not, during the time last aforesaid, * nor yet can, go, return, pass, repass, ride, and labour, without great danger of their lives, and the loss of

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^a An indictment for a nuisance in laying soil in a highway is not bad for want of the length and breadth of the nuisance being set out; nor for a nuisance by digging two ditches in a common footway. *1 Haw. (6th edit.)*

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their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king through the same way going, returning, passing, repassing, riding, and labouring, and against the peace of our said lord the king, his crown and dignity: and that the inhabitants of the said parish of *Fryern Barnet*, in the said county of *Middlesex*, the common highway aforesaid, so as aforesaid being in decay, ought to repair and amend when and so often as it should or shall be necessary.

20. *A* presentment on the view of a justice for not repairing a highway.

Middlesex. *J. S.* esquire, one of the justices of our lord the king, assigned to keep the peace in and for the said county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, by virtue of the ^bstatute in such case made and provided, upon his own proper knowledge presents, that from time whereof the memory of man is not to the contrary there was, and yet is, a certain common and ancient king's highway, leading from the town of *Edgware*, in the county of *Middlesex*, towards and unto the city of *London*, used for all the liege subjects of our said lord the king, and his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, repass, ride, and labour at their free will and pleasure; and that a certain part of the same king's common highway, commonly called the pissing-place, situate, lying, and being in the parish of *Hampstead*, in the said county, and on the east side of the same highway, containing in length one hundred and twenty yards, and in breadth fifteen feet, on the first day of *July*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and continually afterwards, until the thirteenth day of *October*, in the year aforesaid, at the said parish of *Hampstead*, in the county aforesaid was, and yet is, very ruinous, miry, deep, broken, and in great decay, for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king through the same way, with their horses, coaches, carts, and carriages, could not, during the time last aforesaid, nor yet can, go, return, pass, repass, ride, and labour, without great danger of their lives, and loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king through the same way going, returning, passing, repassing, riding, and labouring, and against the peace of our said lord the king, his crown and dignity: and that the inhabitants of the parish of *Hampstead* aforesaid, in the county aforesaid, the common highway aforesaid, so as aforesaid being in decay, ought to repair and amend when and so often as it should or shall be necessary; in testimony whereof the said *J. S.* to these presents hath set his hand and seal, this thirtieth day of *October*, in the year aforesaid. ^c

* 1. *A common nuisance may be defined to be an offence against the public, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires.* 1 *Haw.* 197, § 1.

^a *Vide* Doctrine of Indictments, ante, 93, 94.

^b 13 *Geo.* III. ch. 78, § 24. *Vide* also 1 *Haw.* (6th edit.) 414, 415.

^c For several other forms of indictments and pleadings under this head, see the index to the *Crown Circuit Assistant*, titles *Nuisance* and *Error*.

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2. But annoyances to the interests of particular persons are not punishable by a public prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them. Ibid. § 2.

3. The erecting a gate in a highway, where none had been before, is a common nuisance. Ibid. 199, § 9.

4. It hath been holden, that it is no common nuisance to make candles in a town, because the needfulness of them shall dispense with the noisomeness of the smell; but the reasonableness of this opinion seems justly to be questionable, because whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town; and surely the trade of a brewer is as necessary as that of a chandler, and yet it seems to be agreed, that a brewhouse, erected in such an inconvenient place, wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuisance; and so in the like case may a glass-house or a swine-yard. Ibid. § 10.

5. Two persons were indicted for making great quantities of noisome, offensive, and stinking liquors, called acid spirit of sulphur, oil of vitriol, and oil of aqua fortis, whereby the air was impregnated with noisome and offensive smells; and it was held by the court to be a nuisance. The word noxious comes in the place of the Latin nocivus, and not only means hurtful, but offensive to the smell; and Lord Mansfield said, it is not necessary, to constitute the offence, that the smell should be unwholesome; it is enough if it renders the enjoyment of life and property uncomfortable. * [* 507]
1 Burr. 337, Rex v. White and Ward, E 30 Geo. II.

6. It is a common nuisance to divert part of a public navigable river, whereby the current of it is weakened, and made unable to carry vessels of the same burthen as it could before. Noy, 103; 3 Bac. Abr. 686; 1 Haw. 199. § 11.

7. Also it hath been holden to be a common nuisance to divide a house in a town for poor people to inhabit in, by reason whereof it will be more dangerous in the time of infection of the plague. 2 Rol. Abr. 139, pl. 3. 3 Bac. Abr. 686.

8. Any one may pull down or otherwise destroy a common nuisance, as a new gate, or even a new house, erected in a highway. 1 Haw. 199. § 12.

9. It hath been adjudged, that if a river be stopped, to the nuisance of the country, and none appear bound by prescription to clear it, those who have the piscary, and the neighbouring towns, who have a common passage and easement therein, may be compelled to do it. Ibid. 200, § 13.

10. No indictment for a nuisance can be good which lays it to the damage of private persons only; as where it accuses a man of surcharging such a common, or of inclosing such a piece of ground, wherein the inhabitants of such a town have a right of common, to the nuisance of all the inhabitants of such a town; or of disturbing a water course running to such a mill, to the damage of such a person and his tenants, without saying of^a all the liege subjects of the king. 1 Haw. 197. § 3.

^a But it is laid down, that an indictment for doing a thing which plainly appears immediately to tend to the prejudice of religion, or of the king, as for breaking the walls of a church, or embezzling the king's treasure, &c. is good, without laying it as a common grievance. 3 Bac. Abr. 687. Vide note under prec. 10, ante.

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* Of NUISANCES relating to HIGHWAYS.

11. There are three kinds of ways: first, a footway; second, a foot and horse way, which is, in Latin, called *actus ab agendo*; and this is also vulgarly called a pack and prime way, because it is both a footway, which was the first or prime way, and a pack or drift way also; and the third is termed *via*, or *adius*, which contains the other two, and also a cartway, &c. and it is said to be twofold, viz. *regia via*, the king's highway, for all men; and *communis strata*, as belonging to a city or town, or between neighbours and neighbours. Harg. and But. Co. Lit. 56, (a)

12. Any one of the said ways which is common to all the king's people, whether it leads directly to a market town, or only from town to town, may be properly called a highway; and that any such cartway may be called the king's highway; and that a nuisance in any of the said ways may be punished by indictment. 1 Haw. 201, § 1.

13. Of common right, the general charge of repairing highways lies on the occupiers of the lands in the parish wherein they are; but it is said, that the tenants of the lands adjoining are bound to scour the ditches; and there is no doubt but particular persons may be burthened with the general charge of repairing a highway in two cases, namely, in respect of an inclosure wherein it lies, or by prescription. Ibid. 202, § 5.

14. But it is said, that no person can be charged with such a duty by a general prescription from what his ancestors have done, because no one is bound to do what his ancestors have done, unless it be for some special reason, as the having land descended from such ancestors, which are bound by such like service, &c. Ibid. § 8.

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* 15. Yet it seems that an indictment charging a tenant in fee-simple with having used of right to repair such a way, by reason of the tenure of his land, is certain enough, without adding that his ancestors, or those whose estate he hath, have always so done, for that is implied. 1 Haw. 203, § 8.

16. But the indictment must set forth where those lands lie. 2 H. H. 181.

17. Though a particular person is bound to repair a highway by inclosure or prescription, &c. yet the parish cannot take advantage of it upon the plea of not guilty to an indictment against them for not repairing it, but ought to set forth that discharge in a special plea. 1 Haw. 203, § 9.

18. If it is, however, said, that if a man is charged to repair by reason of the tenure of his land, he may throw it upon the parish by the general issue. 1 Haw. (6th edit.) 422, note 30.

If a parish lies in two distinct counties, an indictment may be brought against that part of it in which the ruinous road lies; but it must appear upon the face of the indictment by what right the charge is laid upon the particular division of any parish which is in one county only, as that they have repaired time out of mind.

a Another prosecution depending for the same crime cannot be pleaded in abatement to an indictment, Dougl. (1st edit.) 228, note 1.

As the statute of 4 Ann. ch. 16, § 4, (allowing double pleas in actions) does not extend to crown proceedings, the party must rely on a single plea. See the Special Pleas in *Cro. Cir. Aff.* 522, 523. See also the second note in page 98.

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5th note in 1 Haw. (6th edit.) 369, and the several authorities there cited. And it seems by common law, that if a fact done in one county proves a nuisance to another, the indictment may be laid in either county. 2 Haw. (6th edit.) 315, § 37.

* 19. There is no doubt but that all injuries whatsoever to any highway, as by digging a ditch or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which shall render it less commodious to the king's people, are public nuisances at common law. 1 Haw. 212, § 48.

20. It is a nuisance to suffer the ditches adjoining to a highway to be foul, by reason whereof the highway is impaired; or to suffer the boughs of trees growing near the highway to hang over the road in such a manner as thereby to incommode the passage: and any person may justify the lopping such trees, so far as to avoid the nuisance. Ibid. § 50; 213, § 52. See stat. 13 Geo. III. ch. 78, § 7.

21. By the common law, any one may abate a nuisance to a highway, and remove the materials, but not convert them to his own use; and an heir at law may be indicted for continuing an incroachment, or other nuisance to a highway, begun by his ancestor, because such a continuance amounts to a new nuisance. 1 Haw. 214, § 61.

22. It is the safer way that an indictment should shew both the place from which, and also the place to which, the way supposed to be out of repair doth lead; yet exceptions, for want of such certainty, have sometimes been disallowed: however, there is no necessity to shew that a highway leads to a market-town, because every highway leads from town to town. And it is necessary, in every such indictment, expressly to shew in what place the nuisance complained of was done, for which cause an indictment for stopping a way at D. leading from D. to C. is not good; for it is impossible that a way leading from D. should be in D. and no other place is alledged. 1 Haw. 219, § 86, 87.

23. Every such indictment ought also certainly to shew to what part of the highway the nuisance did extend, as by shewing how many feet in length, and how many feet in breadth, it contained; otherwise the defendant will neither know the certainty of the charge against him, nor will the court be able, from the record, to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and it hath been resolved, that the place wherein such nuisance is alledged is not sufficiently ascertained in an indictment by shewing that it contained so many feet in length, and so many in breadth, by estimation: and the indictment must shew, that the way is common to all the king's people. Ibid. 219, 220, § 88, 89.

24. A presentment that a highway in such a place is decayed by the default of the inhabitants of such a town is good, without naming any person in certainty; but it hath been adjudged, that an indictment against particular persons must specially charge them every one. Ibid. 220, § 92.

* See also in a presentment the highway must be alledged to lie in the parish, otherwise the parish is not bound to repair; but it is said, that in an indictment for a nuisance, it is not necessary to mention the *termini* of a highway: also if there be two villis in a parish, it is not necessary in an indictment to shew in which vill the nuisance lies. 1 Haw. (6th edit.) 421, note 28.

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25. *The defendants should not plead, that they ought not to repair, without shewing who ought.* Ibid. § 93.

26. *The offenders shall not be discharged by submitting to a fine, but a distringas shall go ad infinitum, till they repair.* Ibid. § 94.

Statutes relating to highways, &c. 7 Geo. III. *cb.* 42; 8 Geo. III. *cb.* 5; 13 Geo. III. *cb.* 78, 84.^a

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* ORDER of JUSTICES.

[Rex v. Fearnley, Trin. 26 Geo. III. B. R.]

Indictment (found at a session of the peace, and removed, &c.) against an overseer of the poor, for refusing to pay a pauper a weekly sum of money, contrary to an order of two justices.

Caption.

West Riding of } **B**E it remembered, That at the general
Yorkshire, to wit, } quarter session of the peace of our lord the
king, holden at *Knareborough*, in and for the west riding of the
county of *York*, on *Tuesday* the fourth day of *October*, in the
twenty-fifth year of the reign of our sovereign lord *George* the third,
king of *Great-Britain*, and so forth, before *A. B. &c.* [*as the jus-*
trices names and additions may be,] and others their fellows, justices of
our said lord the king, assigned to keep the peace of our said lord
the king in and for the said west riding of the county of *York*, and
also to hear and determine divers felonies, trespasses, and other
misdemeanors within the said riding, in the county aforesaid,
committed, that same session of the peace is adjourned by the
justices aforesaid until *Thursday* the 6th day of *July*^b aforesaid, in
the year aforesaid, at ten of the clock in the forenoon of the same
day, to be holden at *Leeds*, in and for the riding aforesaid, to do
further as the court shall consider, &c. And on the said *Thursday*
the 6th day of *October* aforesaid, in the year aforesaid, the same
general quarter session * of the peace is holden by the adjournment
aforesaid, at *Leeds* aforesaid, in and for the said riding, before,
&c. [*the names and additions of the justices who then presided,*] and
others their fellows, justices of our said lord the king, assigned to
keep the peace of our said lord the king in and for the riding aforesaid,
in the said county of *York*, and also to hear and determine
divers felonies, trespasses, and other misdemeanors within the said
riding, in the county aforesaid, committed; at which said general
quarter session of the peace, continued and holden by the adjournment
aforesaid, at *Leeds* aforesaid, in and for the said riding, on
the said *Thursday* the sixth day of *October* aforesaid, in the year
aforesaid, before the said justices last named, on the oath of *A. B.*
&c. [*here insert all the names of the grand jury,*] good and lawful
men of the said riding, in the said county of *York*, then and there
sworn and charged to enquire for our said lord the king, for the
body of the said riding, it was presented as follows, that is to say:

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Grand jury.

Indictment.

That S. F.

West Riding of } **T**HE jurors for our lord the king upon their
Yorkshire, to wit, } oath present, That *Sarah Firth*, of the
township of *Checkheaton*, in the west riding of the county of *York*,

^a For the whole of the statute law relating to this subject, see 1 *Haw.* (6th edit.) from page 365 to 450.

^a See the note at the end of this precedent.

spinster,

ORDER of JUSTICES.

spinster, before the making of the Order of Justices herein after mentioned, to wit, on the eleventh day of *September*, in the year of our Lord one thousand seven hundred and eighty-four, at the township of *Checkheaton* aforesaid, was delivered of a female bastard child, which said bastard child, at the time of the making of the order, and also at the time of the contempt and disobedience herein after mentioned, was, and yet is, living, to wit, at the township of *C.* aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *S. F.* having such * bastard child as aforesaid, she the said *S. F.* on the ^a same day and year aforesaid, at *C.* aforesaid, became and was very poor and impotent, and not able to provide for herself and her said bastard child; and the said *S. F.* so being very poor and impotent, and not able to provide for herself and her said bastard child as aforesaid, she the said *S. F.* afterwards, to wit, on the same day and year aforesaid, at the township of *C.* aforesaid, applied to the then overseers of the poor of and for the township of *C.* aforesaid for relief in the premises; and that the then overseers of the said poor, and each and every of them, then and afterwards, did wholly neglect and refuse to relieve the said *S. F.* so being very poor and impotent as aforesaid, to wit, at the township of *C.* aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *S. F.* so being very poor and impotent, and unable to provide for herself and her said bastard child, after such neglect and refusal as aforesaid, to wit, on the same day and year aforesaid, at the township of *C.* aforesaid, appeared before *H. W.* clerk, and *W. W.* esquire, then being two of the ^b justices of our said lord the king, assigned to keep his peace in and for the riding aforesaid, in the said county of *York*, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said riding, in the county aforesaid, committed; and then and there, before the said *H. W.* and *W. W.* being such justices as aforesaid, took her corporal oath, and did depose, that she the said *S. F.* was very poor and impotent, and unable to maintain herself and her said child; and that she * the said *S. F.* had then lately applied for relief to the then overseers of the poor of the said township, and was by them the said overseers refused to be relieved on that occasion. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *H. W.* and *W. W.* being such justices as aforesaid, did thereupon afterwards, to wit, on the same day and year aforesaid, at the township of *C.* aforesaid, duly summon the said overseers to appear before them, the said *H. W.* and *W. W.* being such justices as aforesaid, and shew cause why relief should not be given to the said *S. F.* in the premises, and that the said then overseers having been so summoned as aforesaid, did, before the said *H. W.* and *W. W.* being such justices as aforesaid, refuse to relieve the said *S. F.* on that occasion, and did not shew to the said justices any sufficient cause why relief should not be granted to the said *S. F.* and that the said *H. W.* and *W. W.* being such justices as aforesaid, did thereupon afterwards, to wit, on the same day and year aforesaid, at the township of *C.* aforesaid, make their certain order in writing, signed with the proper hands and sealed

was delivered of a bastard child.

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Application to the overseers, &c.

who refuse relief, &c.

That the said *S. F.*

appeared before two justices,

and took her oath, &c.

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The justices summons to the overseers to shew cause why, &c.

who refused to relieve, &c.

That the justices,

by their order,

^a As the fact may be.

^b No order of two or more justices of the peace shall be impeached, set aside, or vacated, for not expressing "one of them to be of the *quorum*." 36 Geo. II. ch. 27.

with

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reciting, &c.

[* 516]

did order the churchwardens, &c. to pay so much weekly, &c.

That *J. F.*

was one of the overseers, &c.

to whom the order was delivered,

[* 517]

who neglected and refused to pay, &c.

Averment of a request,

with the seals of them the said *H. W.* and *W. W.* so being such justices as aforesaid; whereby, after reciting that the said *S. F.* had made oath unto them the said *H. W.* and *W. W.* two of his majesty's justices of the peace for the said riding, that she the said *S. F.* was very poor and impotent, and not able to provide for herself and her bastard child; and that she the said *S. F.* had then lately applied for relief to the overseers of the poor of the said township, and was by them refused to be relieved; and after reciting also, that the overseers of the poor of the said township had been duly summoned to shew cause why relief should not be given to the said *S. F.* but had refused to relieve her with * sufficient relief, and had not shewn any sufficient cause why relief should not be granted to her, they the said *H. W.* and *W. W.* did "order the then churchwardens and overseers of the poor of the said township, or some or one of them, to pay unto the said *S. F.* the sum of one shilling and sixpence weekly, and every week, for and towards the support and maintenance of her and her said bastard child, until such time as they should be otherwise ordered, according to law, to forbear the said allowance." And the jurors aforesaid, upon their oath aforesaid, do further present, That one *John Fearnley*, late of the township of *C* aforesaid, in the said west riding of *Yorkshire*, clothier, on the said eleventh day of *September*, in the said year of our Lord one thousand seven hundred and eighty-four, and long before, and afterwards, was one of the overseers of the poor of and for the township of *C* aforesaid, having duly accepted the said office, to wit, at the township of *C* aforesaid; and that it was then and there the proper office and duty of the said *John Fearnley*, as such overseer as aforesaid, well and faithfully to execute and obey the said order of the said *H. W.* and *W. W.* so made as aforesaid, according to the exigency thereof. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said order of the said *H. W.* and *W. W.* so made as aforesaid, afterwards, to wit, on the same day and year aforesaid, at the township of *C* aforesaid, in the riding aforesaid, was duly shewn and delivered to the said *John Fearnley*, so being such overseer as aforesaid, to be by him well and faithfully executed and obeyed in all things, according to the exigency thereof, and according to the said office and duty of the said *John Fearnley*, as such overseer as aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That the * said *John Fearnley*, so being such overseer as aforesaid, and so having seen and received the said order as aforesaid, afterwards, to wit, on the said eleventh day of *September*, in the said year of our Lord one thousand seven hundred and eighty-four, and continually from thenceforth for and during all such time as the said *John Fearnley* continued in his said office of overseer of the poor of the town of *C* aforesaid, unlawfully, wilfully, obstinately, and contemptuously did neglect and refuse, and hath wholly hitherto neglected and refused, to pay unto her the said *S. F.* the sum of one shilling and sixpence, or any part thereof, weekly, and every week, for and towards the support and maintenance of her the said *S. F.* and her said bastard child, as by the said order he the said *John Fearnley*, as such overseer as aforesaid, was required to do; and the same, and every part thereof, is still wholly due and unpaid to the said *S. F.* *a although she the said S. F. whilst the said John Fearnley remained and*

a This indictment was removed into the court of *King's Bench*, and demurred

P E R J U R Y.

and continued as such overseer as aforesaid, to wit, on the same day and year aforesaid, and on divers other days and times as well * before [* 518] as after the nineteenth day of the same September, at the township aforesaid, requested him the said John Fearnley to pay her the same; shewing the and although he the said John Fearnley hath not, at any time what- order to be in force, soever, hitherto been otherwise ordered, according to law, to forbear the said allowance, contrary to the said office and duty of him the said John Fearnley in that behalf, to the manifest hindrance and subversion of justice, to the great damage and impoverishment of the said S. F. and her said child, in contempt of our said lord the king In contempt, and his laws, to the evil and pernicious example of all others in the &c. like case offending, and against the peace of our said lord the king, his crown and dignity.

P E R J U R Y.

1. *Indictment of felony, for perjury by a debtor, (at an adjourned general session of the peace, holden before the mayor, recorder, and aldermen, at the Guildhall, London,) in swearing himself a fugitive.*

London. **T**HE jurors for our lord the king upon their oath pre-Caption.

sent, That on Monday the fifth day of September, in the eighteenth year of the reign of our sovereign lord George the third, king of Great-Britain, &c. a * general session * of the peace [* 519] of our said lord the king was held for the city of London, at the Guildhall within the said city, before A. B. esquire, then mayor of the city of London, J. A. esquire, then recorder of the said city, J. S. and T. W. esquires, then aldermen of the said city, and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said city, and also to hear and determine divers felonies, trespasses, and other misdeeds committed within the said city; and that the same session of the peace was then and there adjourned by the aforesaid justices above

murred to, as well for the omission of these words, as for inserting the sixth day of July in the caption, it being prior to the adjournment-day of the session on which the indictment was found: whereupon the court determined, that the objection, as to the mistake in the caption, was good; but they held, that the sum ordered to be paid weekly was due at the beginning of the week, without giving any opinion as to the demand of payment: therefore the words in question have been supplied for greater safety.—Judgment for the defendant. *Vide 1 Term Rep. 316.*

That disobedience to an order of justices is an offence at common law, see the side note in page 96, and *The King against Robinson, 2 Burr. Rep. 799.*

An order of justices at the quarter session for the discharge of an apprentice, on account of ill-treatment by his master, *Cro. Cir. Aff. 175.*

a *Lambard* seems to make no distinction between general and quarter sessions, but to take them as synonymous terms; however, it seems the better opinion, that quarter sessions are a species of general sessions, and properly called general quarter sessions, which are holden in the four quarters of the year, in pursuance of 2 Hen. V. stat. 1, ch. 4; and that any other sessions holden at any other time (which, by the above statute, may be as often as need shall require) are properly called general sessions: and that those holden for particular purposes, may properly be called special sessions. 2 Haw. 42, § 47.

Indictment for perjury in giving evidence at the trial of an issue on an indictment in this court, without an adjournment. *Cro. Cir. Aff. 325.*

named,

PRECEDENTS of INDICTMENTS.

Adjournment
day.

[* 520]

Defendant
appeared,

and took his
oath.

[* 521]

named, and others their fellows aforesaid, there, until, &c. [as the time may be.] And the same session, by divers further adjournments, was duly continued and adjourned, and was held for the said city of *London*, at the *Guildhall* aforesaid, by adjournment, on *Tuesday* the twenty-seventh day of *September*, in the year aforesaid, before the said *A. B.* esquire, being such mayor as aforesaid, the said *J. A.* esquire, being such recorder as aforesaid, *C. D.* and *E. F.* esquires, then being aldermen of the said city, and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said city, and also to hear and determine divers felonies, trespasses, and other misdeeds committed within the said city. And the jurors aforesaid, upon their oath aforesaid, do further present, That on the same *Tuesday* the *twenty-seventh day of *September*, in the year aforesaid, at the parish of *Saint Michael Bassishaw*, in the ward of *Bassishaw*, in *London* aforesaid, at the said general session of the peace so holden by adjournment as aforesaid, at the *Guildhall* aforesaid, before the said justices of our said lord the king last above named, and others their fellows aforesaid, came in his proper person as a debtor actually beyond the seas in foreign parts on the tenth day of *March*, in the year of our Lord one thousand seven hundred and seventy-eight, and as one who had since returned and surrendered himself unto the gaoler or keeper of the prison of the *Fleet* of our said lord the king, and according to the form of the statute made in the eighteenth year of the reign of our sovereign lord king *George* the third, intituled, "An act for the relief of insolvent debtors, and for the relief of bankrupts in certain cases," *W. M.* late of the parish of *St. Paul, Shadwell*, in the county of *Middlesex*, victualler and mariner, being brought by the warden of the said prison of the *Fleet* (then being gaoler or keeper of the same prison) by virtue of a warrant under the hand and seal of *J. S.* esquire, then and still being one of the aldermen of the said city, and then and still also being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said city, and also to hear and determine divers felonies, trespasses, and other misdeeds committed within the said city; and that the said *W. M.* so being brought, and coming before the justices last aforesaid, at the said general session of the peace so then and there holden by adjournment as aforesaid, he the said *W. M.* then and there in open court did take his corporal oath upon the holy gospel of God (^a the said justices and court * aforesaid having sufficient and competent power and authority to administer the said oath to the said *W. M.* in that behalf); and that the said *W. M.* not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and no wise regarding the laws and statutes of this realm, nor the pains and penalties therein contained, but wickedly intending, by colour and pretext of the said act of parliament, to deceive and defraud one *W. S.* then, and long before, and still, being a creditor of the said *W. M.* and divers others, the creditors of the said *W. M.* (whose names to the jurors aforesaid are as yet unknown,) of their just debts growing due before the said tenth day of *March*, in the said year of our Lord one thousand seven hundred and seventy-eight, then and there, to wit, on the said twenty-seventh day of *September*, in the eighteenth year aforesaid, with force and arms, at the parish and ward aforesaid, in *London*

^a Vide note in *Cro. Cir. Aff.* 306, 307.

aforesaid,

P E R J U R Y.

aforesaid, that is to say, at the said general session of the peace, then and there holden by adjournment as aforesaid, before the said justices of our said lord the king last above named, and others their fellows aforesaid, upon his oath aforesaid, falsely, maliciously, wilfully, corruptly, and feloniously did say, swear, protest, and declare (among other things), that he the said *W. M.* was actually, on the tenth day of *March*, one thousand seven hundred and seventy-eight, beyond the seas in foreign parts, that is to say, at *Rotterdam* (meaning *Rotterdam*, in *Holland*); whereas in truth and in fact, he the said *W. M.* was not actually, on the tenth day of *March*, one thousand seven hundred and seventy-eight, at *Rotterdam*, in *Holland*; and whereas in truth and in fact the said *W. M.* was not actually, on the tenth day of *March*, one thousand seven hundred and seventy-eight, at *Rotterdam*, beyond the seas in * foreign parts; and whereas in truth and in fact the said *W. M.* was not actually, on the tenth day of *March*, one thousand seven hundred and seventy-eight, beyond the seas in foreign parts: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *W. M.* then and there, to wit, on the twenty-seventh day of *September*, in the eighteenth year aforesaid, at *London* aforesaid, to wit, in the parish and ward aforesaid, in the court of the said open session, before the same justices last above named, and others their fellows aforesaid, (they the said last-mentioned justices, their said fellows, and the court aforesaid, so having sufficient and competent and power and authority to administer the said oath to the said *W. M.*) by his own act and consent, and of his own most wicked and corrupt mind and disposition, in manner and form aforesaid, did falsely, wickedly, wilfully, feloniously, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and against the form of the *statute* in such case made and provided.

Perjury.

Averments.

[* 522]

Conclusion.

2. *Indictment for perjury, in an affidavit before a justice, (found at a session of oyer and terminer holden on Clerkenwell-green, for the county of Middlesex,) in order to corroborate an affidavit made by a third person, respecting an assault alledged to have been committed on the latter.* [* 523]

Middlesex. **B**E it remembered, That at the session of oyer and terminer of our sovereign lord the king, holden for the county of *Middlesex*, at the *New Sessions-house on Clerkenwell-green*, in the said county, on the ninth day of *April*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. before *W. M. J. S. W. H. N. C.* esquires, and others their fellows, &c. [here set out the commission of oyer and terminer from this place, as in page 81, until you come to the

* 18 Geo. III. ch. 52, § 27, 36. By the latter section, persons convicted of perjury are deemed felons, but it does not oust them of clergy.

The precedent on this subject, in the fifth edition, page 389, seems wrong in two instances, viz. first, for being framed on the statute of 21 Geo. III. ch. 63, which was made respecting debtors liberated out of the prisons in *London*, *Middlesex*, and *Surry*, by the rioters, in *June*, 1780, and for other purposes therein mentioned, and which directs a different oath from that in question; secondly, for mistaking the title of the act, supposing that an indictment of the above description would have lain upon it. *Vide Cowp.* 474; 1 Term Rep. 224; and 2 Term Rep. 654.

names

PRECEDENTS of INDICTMENTS.

Grand jury.

Indictment.

[* 524]
Oath of R. C.

Defendant's
oath.

[* 525]
Perjury.

Averments.

names of the grand jury, *page 82, ante,*] by the oath of *P. B. &c.* [*names and additions of the grand jury,*] good and lawful men of the said county of *Middlesex*, then and there sworn, and charged to enquire for our said lord the king, for the body of the said county, It is presented in manner and form as follows, that is to say, *Middlesex*. The jurors for our lord the king upon their oath present, That formerly, to wit, on the sixth day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish of *St. James, Clerkenwell*, in the county of *Middlesex*, *R.* the wife of *G. C.* late of the parish aforesaid, butcher, came before *T. D.* esquire, then and yet being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed * in the same county, and then and there, upon her oath, charged *J. G.* and *F. M.* before the said *T. D.* the justice aforesaid, with having assaulted, stricken, and bruised her the said *R.* and that she the said *R.* then and there also deposed, upon oath, before the said *T. D.* the justice aforesaid, that she the said *R.* verily believed her life was then in very great danger. And the jurors aforesaid, upon their oath aforesaid, do further present, that *C. S.* late of the parish of *St. James, Clerkenwell*, aforesaid, in the county of *Middlesex* aforesaid, widow, well knowing the premises, and wickedly devising and intending unjustly to aggrieve the said *J. G.* and *F. M.* and to procure them, without any just cause, to be imprisoned and kept in prison for a long space of time, on the said sixth day of *November*, in the year aforesaid, at the parish of *St. James, Clerkenwell*, aforesaid, in the county aforesaid, then and there being present in her own proper person before the said *T. D.* then and there being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, she the said *C. S.* did then and there take her corporal oath, and was sworn upon the holy gospel of God, before the said *T. D.* (he the said *T. D.* then and there having sufficient and competent power and authority to administer the said oath to the said *C. S.* in that behalf); and that the said *C. S.* not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, then and there, before the said *T. D.* upon her oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, give, and make information in writing (amongst other things) * in a *substance* and to the effect following, that is to say, that she the said *C. S.* as a midwife, attended the said *R.* since *Sunday* night then last; and that she the said *C. S.* found her the said *R.* in a very dangerous condition; and that she the said *C. S.* believed that the child or children the said *R.* was then pregnant of was or were dead within her the said *R.* occasioned by the violence which she the said *R.* had received from the said *J. G.* and *F. M.* whereas in truth and in fact, at the time she the said *C.* so took her oath

* It seems not only the safer but the better method to set out the substance and effect of the false matter, because it is less liable to objection, and saves a multiplicity of explanations by innuendo. Vide *Bull. N. P.* (5th edit.) 6; *Regina v. Drake*, *Salk.* 660, 661; *Rex v. Aylett*, 1 *Term Rep.* 63; and the note in *Cro. Cir. Ass.* 306, 307.

aforesaid,

aforesaid, in form aforesaid, or at any other time during the time she is mentioned in the said information of her the said C. to have attended the said R. she the said C. did not find her the said R. in a very dangerous condition, or in any dangerous condition whatsoever; and whereas in truth and in fact she the said R. was not then, or at any other time during the time in that behalf aforesaid, in any dangerous condition, but she the said C. at the time she so took her oath aforesaid, in form aforesaid, then and there well knew that the said R. was not then in any dangerous condition; and whereas in truth and in fact, at the said time when she the said C. so took her oath aforesaid, in form aforesaid, or at any other time during the time she is mentioned to have attended the said R. as aforesaid, she the said R. was not pregnant of or with any child or children, nor was or were any child or children then, or during the time in that behalf aforesaid, dead within her the said R. and whereas in truth and in fact, at the time when the said C. so took her * oath aforesaid, in form aforesaid, she the said C. well knew that the said R. was not then, or at any other time during the said time she is mentioned to have attended the said R. as aforesaid, pregnant of or with any child or children, and that then, or at any time during the time in that behalf aforesaid, there was not nor were any child or children dead within her the said R. and so the jurors aforesaid, upon their oath aforesaid, do say, That the said C. on the said sixth day of *November*, in the year aforesaid, at the parish of *St. James, Clerkenwell*, aforesaid, in the county aforesaid, before the said *T. D.* being such justice as aforesaid, (and then and there having sufficient and competent power and authority to administer the said oath to the said C.) by her own act and consent, and of her own most wicked and corrupt mind and disposition, in manner and form aforesaid, did falsely, wickedly, wilfully, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

[* 526]

Conclusion.

3. *Indictment for perjury upon hearing of an appeal at a quarter session against an order of adjudication of bastardy, made by two justices of the peace.*

Herefordshire. **T**HE jurors for our lord the king upon their oath present, That *M. C.* late of the parish of *Orleton*, in the county of *Hereford*, single woman, on the sixth day of *March*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county * aforesaid, in her proper person, came before *J. C.* and *R. S.* esquires, then being two of the justices of our sovereign lord the king, assigned to keep the peace of our said lord the king in and for the said county of *Hereford*, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the said county, and then and there having sufficient and competent power and authority to administer an oath, and take her examination herein after mentioned, (^a one of whom, to wit, the said *R. S.* then was of the *quorum*;) and then and there the said *M. C.* was sworn, and took her corporal oath before the said *J. C.* and *R. S.* on the holy gospel of God, and then and there, upon her oath aforesaid, did

[* 527]
Came before
two justices,

and took her
oath, &c.

^a The omission of these words will not vitiate, by 26 *Geo. II.* ch. 27. *Vide* Order of Justices, *ante*.

say,

PRECEDENTS of INDICTMENTS.

say, depose, swear, and give her examination in writing (amongst other things) in ^b *substance* and to the effect following, that is to say, *That on or about the twentieth day of November, in the year of our Lord one thousand seven hundred and eighty, she the said M. C. was delivered of a female bastard child, in the said parish of Orleton, in the said county of Hereford; and that F. P. of the town of Ludlow, in the county of Salop, gentleman, was the father of the said bastard child; and that the said bastard child had been chargeable to the parish of Orleton, and was likely so to continue; and that the charge and expence of her lying-in was paid by the churchwardens and overseers of the poor of the said parish of Orleton, or some or one of them, she being unable to maintain herself, as by the said examination (amongst other things), relation being thereunto had, doth and may more fully appear; whereupon they the said J. C. and R. S. the * justices* aforesaid, pursuant to the statute in such case made and provided, afterwards, to wit, on the same sixth day of *March*, in the twenty-first year aforesaid, at the parish of *Orleton* aforesaid, in the county of *Hereford* aforesaid, by a certain order under their hands and seals duly made, bearing date the same day and year last mentioned, did adjudge the said *F. P.* of the town of *Ludlow*, in the county of *Salop*, gentleman, to be the putative father of the said bastard child; and that, as well for the relief of the same parish of *Orleton*, in part, as also for the provision and maintenance of the said bastard child, he the said *F. P.* should weekly and every week, from the day of the date of the said order, and so long as the said bastard child should be chargeable to the said parish of *Orleton*, pay, or cause to be paid, to the churchwardens or overseers of the poor of the said parish of *Orleton*, for the time being, the sum of eighteen-pence, for and towards the maintenance of the said bastard child; and that he the said *F. P.* should then forthwith, upon notice of the same order, pay, or cause to be paid, to the churchwardens or overseers of the poor of the said parish of *Orleton*, the sum of six pounds, of lawful money of *Great-Britain*, it then appearing to the same justices, that so much had necessarily been disbursed and paid by the churchwardens and overseers of the poor of the said parish of *Orleton* by reason and on account of the birth and maintenance of the said bastard child; and that the said *F. P.* should give sufficient security to the churchwardens and overseers of the poor of the parish of *Orleton* aforesaid well and truly to perform so much thereof as did concern the said *F. P.* and which, on the part of the said *F. P.* was, by the same order, ordered to be done and performed, as by the same order, relation being thereunto had, doth and may more fully * appear; of which said order the said *F. P.* afterwards, to wit, on the seventh day of *March*, in the year aforesaid, at *Ludlow* aforesaid, in the said county of *Salop*, had notice. And the jurors aforesaid, upon their oath aforesaid, do further present, That afterwards, to wit, at the general quarter session of the peace of our sovereign lord the king, holden at *Hereford*, in and for the county of *Hereford*, on *Tuesday* in the first week next after the close of *Easter*, to wit, on the third day of *April*, in the said twenty-first year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. before Sir *J. M.* baronet, *J. S. E. H. V. C.* esquires, and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county of *Here-*

[* 528]
Whereupon the
justices

did adjudge
F. P. to be the
father, &c.

[* 529]
Of which order
the said *F. P.*
had notice.

That at the
quarter-session

a See the note under prec. 2, ante, 525.

ford, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, the said *F. P.* did *F. P. appealed*, then and there, in due form of law, appeal to the said court of general quarter session of the peace against the said order of adjudication made by the said *J. C.* and *R. S.* the two justices first above named, in manner and form as aforesaid, and afterwards, to wit, at the same general quarter session of the peace of our said lord the king, holden at *Hereford* aforesaid, in and for the said county of *Hereford*, by adjournment, on *Thursday* the sixth day of the same month of *April*, in the twenty first year aforesaid, before the said Sir *J. M. J. S. E. H. V. C.* and others their fellows, justices as aforesaid, the said appeal came on to be heard, and then and there was heard, before the justices of our said lord the king last named, and others their fellows aforesaid; and the said *M. C.* then and there was sworn, and took her corporal oath, before the same justices last named, on the holy gospel of God, to speak the truth, the whole * truth, and nothing but the truth, of and upon the premises aforesaid, (they the said justices last named respectively then and there having sufficient and competent power and authority to administer an oath to the said *M. C.* in that behalf,) and that the said *M. C.* not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, and wickedly and maliciously contriving and intending, not only to deprive the said *F. P.* of his good name, fame, credit, and reputation, but also falsely to charge the said *F. P.* with begetting her with child, then and there, to wit, on the said sixth day of *April*, in the twenty first year aforesaid, at *Hereford* aforesaid, in the county of *H.* aforesaid, did falsely, wickedly, wilfully, and corruptly, on her oath aforesaid, before the said justices of our said lord the king last above named, and others their fellows aforesaid, say, depose, swear, and give evidence upon the hearing of the said appeal (amongst other things) in a substance and to the effect following, that is to say, That the said *F. P.* begot her the said *M. C.* with child at his own house in *Ludlow*; (meaning the house of the said *F. P.* situate in the town of *Ludlow*, in the county of *Salop.*) in the lower room of the said house, upon a bed that was in the said room, in the month of *February*, one thousand seven hundred and eighty, (meaning the month of *February*, in the year of our Lord one thousand seven hundred and eighty;) whereas in truth and in fact the said *F. P.* did not beget the said *M. C.* with child at his own house at *Ludlow*, in the lower room of the said house, or in any room or place in the said house of the said *F. P.* or in any other place whatsoever; and whereas in truth and in fact there was not then, to wit, in the said month of *February*, one thousand seven hundred and eighty, * any bed whatsoever in any lower room of or in the said house of him the said *F. P.* and whereas in truth and in fact the said *F. P.* never had carnal knowledge of the body of the said *M. C.* and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *M. C.* on the said sixth day of *April*, in the twenty-first year aforesaid, at *Hereford* aforesaid, in the said county of *Hereford*, before the same justices last above named, and others their fellows aforesaid, (so as aforesaid having sufficient and competent power and authority to administer the said oath to the said *M. C.*) by her own act and consent, and of her own most wicked and corrupt mind and disposition,

That *M. C.* took her oath, &c.

[* 530]

Perjury.

Averments.

[* 531]

Conclusion.

a See the note under prec. 2, ante, 525.

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in manner and form aforesaid, did falsely, wickedly, wilfully, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others in the like case offending, to the great damage of the said *F. P.* and against the peace of our said lord the king, his crown and dignity.

- 4- *Indictment for perjury by a justice of the peace, in an affidavit before a judge of the court of King's Bench, upon shewing cause why a rule should not be made absolute for leave to file an information, touching the conduct of such justice, on account of refusing licences to persons who had voted at an election, &c.*

That

[* 532]
by a rule of
court it was
ordered, &c.

Rule enlarged.

That by the affidavit of *J. B.*

W. H. being a justice, refused to grant licences, &c.

[* 533]

Middlesex. **T**HE jurors for our lord the king upon their oath present, That some time ago, to wit, *Friday*, on the feast day of *St. Martin*, in the ninth year of the reign of our sovereign lord *George* the third, by the grace of God, king of *Great-Britain*, &c. in the court of our said lord the king, before the king himself, * (the same court then and still being at *Westminster*, in the county of *Middlesex*,) a rule of the said court was made, whereby, upon reading the several affidavits of *J. B.* of the borough of *A.* in the county of *B.* innkeeper, and *J. P.* of the same place, victualler, it was ordered, That *Saturday* next after the octave of *St. Martin* should be given to *J. W.* esquire, to shew cause why an information should not be exhibited against him for certain misdemeanors, upon notice of that rule to be given to him in the mean time; and that afterwards, to wit, on *Monday* next after the octave of *St. Martin*, in the year aforesaid, at *W.* aforesaid, the said rule of court was enlarged by another rule of the same court there made, whereby, among other things, it was by the said court ordered, That the second day of the then next term should be peremptorily further given to the said *W. H.* to shew cause why an information should not be exhibited against him for certain misdemeanors (upon the undertaking in the same last-mentioned rule expressed); in and by one of which said affidavits, whereon the said original rule was grounded, to wit, the affidavit of the said *J. B.* it was sworn and alledged (among other things) in substance and to the effect following, to wit, That the said *W. H.* being a justice of the peace for the said borough, had then lately refused to grant them the said *J. B.* and *J. P.* licences; and that they the said *J. B.* and *J. P.* verily believed the said *W. H.* refused to grant them licences in order to punish them, and terrify others, because they the said *J. B.* and *J. P.* voted for *N. B.* esquire, at the last election for a member to serve in parliament for the said borough of *A.* who was then one of the candidates, and not for *J. M.* esquire, the other candidate; and that the said *W. H.* together with the said *J. M.* esquire, being recorder of the * said borough, had granted licences to sell ale to all those publicans who had voted for or been in the interest of the said *J. M.* esquire, at the said election for a member of parliament, as they the said *J. B.* and *J. P.* had heard and verily believed; and that he the said *W. H.* being such justice as aforesaid, did, some time in the month of *July* then last, assert and declare to one *R. R.* one *W. W.* and divers other persons, that they the said *J. B.* and *J. P.* should repent for having voted as they did at the election (meaning the said election before mentioned); for that he the said *W. H.* had put them the said *J. B.* and *J. P.* in

a black

PERJURY.

a *black book*, and that when the time of granting licences (meaning licences usually granted by justices of the peace to innkeepers and victuallers, for the purposes in that behalf provided and directed by the laws of this realm) came, he the said *W. H.* would take care that they the said *J. B.* and *J. P.* should have none (meaning such licences as aforesaid), in order to punish the rascals (meaning the said *J. B.* and *J. P.*) And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *W. H.* late of the parish of St. *Andrew, Holborn*, in the county of *Middlesex* aforesaid, esquire, otherwise called *W. H.* of the borough of *A.* aforesaid, in the county of *B.* aforesaid, esquire, otherwise called *W. H.* of the borough of *Abingdon* aforesaid, gentleman, having due notice of the said original rule, and the said other rule of court above mentioned respectively, and not having the least regard for truth and justice, but minding and wickedly imagining, devising, and intending, by falsehood and wicked means, to procure the same first rule to be discharged and set aside, and to prevent justice and pervert the due course of law, and also to vex, harass, aggrieve and oppress the aforesaid *J. B.* and *J. P.* afterwards, to wit, on the * sixteenth day of *January*, in the ninth year aforesaid, at the parish of St. *Andrew, Holborn*, aforesaid, in the said county of *Middlesex*, in his proper person, before Sir *Joseph Yates*, knight, then and yet being one of the justices of our said lord the king, assigned to hold pleas in the said court of our lord the king, before the king himself, was duly sworn, and did take his corporal oath, upon the holy gospel of God, touching and concerning the matter of the said original rule then depending against him the said *W. H.* (he the said Sir *Joseph Yates* then and there having sufficient and competent power and authority to administer an oath to the said *W. H.* in that behalf); and that the said *W. H.* not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, to wit, on the same day and year last aforesaid, at the parish of St. *Andrew, Holborn*, aforesaid, in the said county of *Middlesex*, upon his oath aforesaid, before the said Sir *Joseph Yates*, the justice aforesaid, did falsely, maliciously, wickedly, wilfully, and corruptly say, depose, swear, and make affidavit (amongst other things) in substance and to the effect following, that is to say, That he the said *W. H.* well remembered having some conversation with the said *R. R.* and *W. W.* and several other persons, in the month of *July* then last, respecting the granting of licences (meaning such licences as aforesaid) to the innkeepers and victuallers of the borough of *A.* aforesaid, and that the names of them the said *J. B.* and *J. P.* had been mentioned in such conversation; but that he the said *W. H.* did not, in the said conversation in the said month of *July*, or at any other time whatsoever, assert, mention, or declare to or in the presence of them the said *R. R.* and *W. W.* and the said other persons, or any of them, or to * any other person, that they the said *J. B.* and *J. P.* should repent for having voted as they did at the election (meaning the said election before mentioned); and that he the said *W. H.* did not, in the said conversation between him and the *R. R.* *W. W.* and the said other persons so had as aforesaid, or at any other time whatsoever, assert, mention, or declare to or in the presence of them the said *R. R.* *W. W.* and the said other persons, or any of them, that he the said *W. H.* had put them the said *J. B.* and *J. P.* in a *black book*, or that he would act or conduct himself in any

That the said *W. H.*

having due notice of the rules,

[* 534]

took his oath, &c.

Perjury.

[* 535]

T manner

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Averments.

[* 536]

[* 537]

manner whatsoever in order to punish them the said *J. B.* and *J. P.* for, by means, or on account of their having voted as they did at the said election as aforesaid; but that, on the contrary thereof, he the said *W. H.* being such justice as aforesaid, did, in the said conversation so had with the said *R R. W W.* and the said other persons, in the said month of *July*, at the borough of *A.* aforesaid, assert and declare, that the reason why they the said *J. B.* and *J. P.* should in due time be refused licences (meaning such licences as aforesaid) was, because they kept disorderly houses, and in all probability would continue so to do; whereas in truth and in fact he the said *W. H.* being such justice as aforesaid, did, in the said discourse which he the said *W. H.* so had with the said *R R. W W.* and the said other persons, to wit, *AB. CD. EF.* and *GH.* as aforesaid, that is to say, on the eighth day of *July*, in the year of our Lord one thousand seven hundred and sixty-eight, at the borough of *A.* aforesaid, assert, mention, and declare to and in the presence of the said *R R. W W. AB. CD. EF.* and *GH.* that they the said *J. B.* and *J. P.* should repent for having voted as they the said *J. B.* and *J. P.* did at the election (meaning the said election before mentioned); and whereas in truth and in fact he the said *W. H.* being such justice as aforesaid, in the said conversation so had between him the said *W. H.* and the said *R R. W W.* and the said other persons, to wit, the said *AB. CD. EF.* and *GH.* on the said eighth day of *July* as aforesaid, did, by means and on account of such election and voting as aforesaid, assert, mention, and declare to and in the presence and hearing of them the said *R R. W W. AB. CD. EF.* and *GH.* that he the said *W. H.* had put them the said *J. B.* and *J. P.* in a *black book*, and that when the time of granting such licences (meaning such licences as aforesaid) came, he the said *W. H.* would take care that they the said *J. B.* and *J. P.* should have none (meaning such licences as aforesaid), in order to punish the rascals (meaning the said *J. B.* and *J. P.*); and whereas in truth and in fact he the said *W. H.* being such justice as aforesaid, in the said conversation so had between him the said *W. H.* and the said *R R. W W. AB. CD. EF.* and *GH.* on the said eighth day of *July* as aforesaid, by means and on account of the said election, and such voting of and by them the said *J. B.* and *J. P.* as aforesaid, did assert, mention, declare to and in the presence and hearing of them the said *R R. W W. AB. CD. EF.* and *GH.* in substance and to the effect following, that is to say, that when the time of granting licences (meaning such licences as aforesaid) came, he the said *W. H.* would take care that they the said *J. B.* and *J. P.* should not have licences (meaning such licences as aforesaid), in order to punish them the said *J. B.* and *J. P.* and whereas in truth and in fact he the said *W. H.* did not, in the said conversation so had with the said *R R. W W. AB. CD. EF.* and *GH.* on the said eighth day of *July*, at the borough of *A.* aforesaid, assert or declare, that the reason why the said *J. B.* and *J. P.* should in due time be refused licences was, because they kept disorderly houses, and in all probability would continue so to do, or any words to that or the like effect; and whereas in truth and in fact he the said *W. H.* did not at any time whatsoever assert, mention, or declare to or in the presence or hearing of the said *R R. W W. AB. CD. EF.* and *GH.* or any of them, that they the said *J. B.* and *J. P.* or either of them, kept disorderly houses; and whereas in truth and in fact he the said *W. H.*

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W. H. at the time he so took his oath and was so sworn as aforesaid, well knew that they the said *J. B.* and *J. P.* as such innkeeper and victualler as aforesaid, on the said eighth day of *July*, kept orderly and well-governed houses at the borough of *A.* aforesaid: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *W. H.* on the said sixteenth day of *January*, in the ninth year aforesaid, at the parish of *St. Andrew, Holborn*, aforesaid, in the said county of *Middlesex*, upon his oath aforesaid, before the said Sir *Joseph Yates*, being such justice as aforesaid, (and then and there having sufficient and competent power and authority to administer the said oath to the said *W. H.*) by his own act and consent, and of his most wicked and corrupt mind and disposition, in manner and form aforesaid, did falsely, wickedly, wilfully, maliciously, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others in the like case offending, to the great damage of the said *J. B.* and *J. P.* and against the peace of our said lord the king, his crown and dignity.^a

Conclusion.

* 5. *Indictment for perjury in an affidavit before a judge of the court of Common Pleas, in order to hold a man to bail.* [* 538]

London. **T**HE jurors for our lord the king upon their oath present, That *T. D.* late of *W.* in the county of *O.* taylor, wickedly and maliciously contriving and intending one *W. H.* unlawfully to aggrieve, and the said *W. H.* to great expence of his monies wickedly to put and bring, and also to cause the sum of fifty-two pounds to be indorsed upon a process of the court of our said lord the king of the bench at *Westminster*, by virtue of which the said *W. H.* was arrested to answer in the same court at the suit of *R. P.* with intent that the said *W. H.* should be compelled to find bail for the aforesaid sum of fifty-two pounds, of the monies of this realm, according to the form of the ^bstatute in such case made and provided, he the said *T. D.* on the sixth day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at *London*, to wit, in the parish of *St. Dunstan* in the *West*, in the ward of *Farringdon Without*, in *London* aforesaid, came in his proper person before *H. G.* esquire, then being one of the justices of our said lord the king of the bench, and then and there, in due form of law, was sworn, and did take his corporal oath, upon the holy gospel of God, before the said *H. G.* Oath. (he the said *H. G.* then and there having sufficient and competent power and authority to administer the said oath to the said *T. D.* in that behalf); and that the said *T. D.* being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by * the instigation of the devil, then and there, the said *H. G.* upon his oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did say, swear, and make affidavit in writing (amongst other things) in ^csubstance and to the effect following, that is to say, That *W. H.* (meaning the said *W. H.* before mentioned) of *Banbury*, in the county of *Oxford*, was justly and truly indebted unto him the said *T. D.* in the sum of fifty-two pounds

[* 539]

Perjury.

^a See the indictment against *Christopher Atkinson*, and the affirmance of judgment thereon in the house of lords. *Cro Cir. Ass.* 537 to 451.

^b 12 Geo. I. ch. 29, § 2.

^c Vide note under prec. 2, ante, 525.

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Averments.

[* 540]

Conclusion.

of lawful money of *Great-Britain*, by virtue of a promissory note drawn and made for the payment of the said sum of fifty-two pounds by the said *W. H.* to him the said *T. D.* and delivered to him the said *T. D.* by the said *W. H.* as by the same affidavit affiled in the said court of our said lord the king of the bench at *Westminster* aforesaid, in the county of *Middlesex*, (amongst other things) more fully appears; whereas in truth and in fact the said *W. H.* in the affidavit aforesaid named, was not, at the time of making the said affidavit by the said *T. D.* as aforesaid, indebted to the said *T. D.* in the said sum of fifty-two pounds in the said affidavit mentioned, by virtue or on account of the said supposed promissory note in the said affidavit also mentioned; and whereas in truth and in fact he the said *W. H.* in the said affidavit named, never did make, draw, or deliver any promissory note whatsoever for the payment of money by him the said *W. H.* to the said *T. D.* and whereas in truth and in fact he the said *W. H.* in the said affidavit named, was not, at the time of making the said affidavit as aforesaid, or at any other time, indebted to the said *T. D.* in the sum of fifty-two pounds whatsoever; and whereas in truth and in fact he the said *W. H.* in the said affidavit named, was not, at the time of * making the said affidavit as aforesaid, or at any other time, indebted to the said *T. D.* in any sum of money whatsoever; and whereas in truth and in fact he the said *W. H.* did not, at the time of making the said affidavit as aforesaid, or at any other time, owe to the said *T. D.* the sum of fifty-two pounds, or any other sum of money whatsoever: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *T. D.* on the said sixth day of *December*, in the twenty-first year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, upon his oath aforesaid, before the said *H. G.* being such justice as aforesaid, (and then and there having sufficient and competent power and authority to administer the said oath to the said *T. D.*) by his own act and consent, and of his own most wicked and corrupt mind and disposition, in manner and form aforesaid, did falsely, wickedly, wilfully, maliciously, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil example of all others in the like case offending, to the great damage of the said *W. H.* and against the peace of our said lord the king, his crown and dignity.^a

6. *Indictment for perjury in an affidavit in the Marshalsea court, by swearing that a man was indebted to the deponent in ten pounds, when he was not in any wise indebted to him.*

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Surry. **T**HE jurors for our lord the king upon their oath present, That *A. C.* late of the parish of *St. George, Southwark*, in the county * of *Surry*, yeoman, wickedly and maliciously contriving and intending one *B. W.* to aggrieve, and the said *B. W.* to great expence of his monies wickedly to put and bring, and to cause the sum of ten pounds to be indorsed upon a process to be issued out of the palace-court of *Westminster* of our said lord the king, holden at *S.* aforesaid, in order to cause and procure the said *B. W.* to be arrested thereon, to appear in the same palace-court at the suit of the said *A. C.* and also with intent that

^a *An Indictment for perjury in an affidavit before the signer of the bills of Middlesex, in order to hold a person to bail, Cro. Cir. Aff. 476.*

the

the said *B. W.* should be compelled to find bail for the aforesaid sum of ten pounds, according to the form of the ^a statute in such case made and provided, on the thirtieth day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the said palace-court of *Westminster* of our said lord the king, holden at *Southwark*, in the parish and county aforesaid, and within the jurisdiction of that court, came in his proper person before *J. P.* gentleman, and then and there did produce and exhibit a certain *affidavit*, in writing, of him the said *A. C.* and then and there the said *A. C.* in due form of law was sworn, and did take his corporal oath, upon the holy gospel of God, Oath: touching the matter in that *affidavit* contained, before the said *J. P.* (he the said *J. P.* then and there having sufficient and competent power and authority to administer an oath to the said *A. C.* in that behalf); and that the said *A. C.* then and there, upon his said oath taken before the said *J. P.* as aforesaid, did swear that the contents of his said ** affidavit* was true; and that the said *A. C.* so being sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and little regarding the laws of this realm, or the pains and penalties therein contained, then and there, upon his oath aforesaid, in his affidavit aforesaid, falsely, wilfully, wickedly, and corruptly did say, depose, and swear (amongst other things) in ^b *substance* and to the effect following, that is to say, That *B. W.* (meaning the said *B. W.* Perjury. before mentioned) was indebted to him the said *A. C.* in the sum of ten pounds, of lawful money of *Great-Britain*, for rent, as by the said affidavit affiled in the said palace-court of *Southwark* aforesaid (amongst other things) more fully appears; whereas in truth and in fact the said *B. W.* was not, at the time of making the said affidavit, or at any other time, indebted to him the said *A. C.* in the aforesaid sum of ten pounds, or in any other sum of money whatsoever: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *A. C.* on the said thirtieth day of *December*, in the twenty-first year aforesaid, at the parish aforesaid, in the county aforesaid, in his affidavit aforesaid, before the said *J. P.* (so as aforesaid having sufficient and competent power and authority to administer the said oath to the said *A. C.*) by his own act and consent, and of his own most wicked and corrupt mind and disposition, in manner and form aforesaid, did falsely, wickedly, wilfully, maliciously, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil example of all others in the like case offending, to the great damage of ** the said B. W.* and against the peace of our said lord the king, his crown and dignity. ^c

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Averments.

Conclusion.

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^a 12 Geo. I. ch. 49, § 2.

Formerly persons could be arrested in this court for forty shillings; but now by 19 Geo. III. ch. 70, § 1, no person shall be arrested, or held to special bail, upon any process issuing out of an inferior court for less than ten pounds.

^b Vide note under prec. 2, ante, 525.

^c The bare making of an affidavit, without using it, is not sufficient to convict a person of perjury. *Holt's Rep.* 534. But where an affidavit cannot be read in evidence, yet if the person who makes it be sworn as a witness, such affidavit may be produced against him to shew wherein he contradicts himself. *Ibid.*

PRECEDENTS of INDICTMENTS.

7. Indictment for perjury in an answer sworn before a master in Chancery.

That *M. F.*

exhibited her bill;

thereby shewing her claim, &c.

Complaint.

[* 544]

Prayer.

As by, &c.

[* 545]

Answer.

Oath.

Middlesex. **T**HE jurors for our lord the king, upon their oath present, That *M. F.* widow, on the fifth day of *February*, in the first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. did exhibit her *English* bill of complaint, in writing, in the court of *Chancery* of our said lord the king, (the same court then and still being at *Westminster*, in the said county of *Middlesex*,) against one *H. T.* of *London*, brewer, directed to the right honourable *A.* lord *B.* baron of *C.* lord high chancellor of *Great-Britain*, thereby shewing and explaining the claim, right, title, and interest of her the said *M. F.* of, in, and to the rents, issues, and profits arising and accruing from and out of certain premises, to wit, a certain messuage or dwelling-house, a certain garden, and divers, to wit, six acres of land, with the appurtenances, situate and being at the parish of *E.* in the said county of *Middlesex*, in the said bill of complaint particularly mentioned and described; and also by her said bill then and there, to wit, on the same day and year aforesaid, at *Westminster* aforesaid, in the county aforesaid, complaining and shewing that divers large sums of money, being rents, issues, and * profits arising and accruing due to her the said *M. F.* from and out and in respect of the said premises above mentioned, had come to the hands of him the said *H. T.* who had retained the same, and refused to account with her the said *M. F.* in any manner whatsoever for the same, or any part thereof; whereupon the said *M. F.* by her said bill of complaint, did pray (amongst other things) that the said *H. T.* might set forth in his answer to the said bill of complaint the amount and value of the yearly rents, issues, and profits of the premises (meaning the said premises in the said bill of complaint mentioned, and herein also above mentioned), and that he the said *H. T.* might account with her the said *M. F.* for such of those rents, issues, and profits as came to the hands of him the said *H. T.* at a short day to be fixed by that honourable court, and in and by the said bill of complaint of her the said *M. F.* remaining filed as of record in the said court of *Chancery*, at *Westminster* aforesaid, in the said county of *Middlesex*, (amongst other things) more fully appears. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *H. T.* the defendant named in the said bill of complaint of the said *M. F.* afterwards, to wit, on the twelfth day of *August*, in the second year of the reign of our said lord the king, at the parish of *St. Dunstan* in the *West*, in the said county of *Middlesex*, came in his own proper person before *A. A.* esquire, then being one of the masters of the said court of *Chancery*, and then and there before the said *A. A.* esquire, exhibited and produced the answer * in writing of him the said *H. T.* to the aforesaid bill of complaint of her the said *M. F.* intituled, "The answer of *H. T.* brewer, the defendant, to the bill of complaint of *M. F.* widow, complainant;" and that the said *H. T.* then and there in due form of law was sworn, and did take his corporal oath, upon the holy gospel of God, before the said *A. A.* esquire, then being one of the said masters of

a The greater part of this parish is in *London*.

If an affidavit be alledged to have been made in *Serjeants-inn, London*, yet it is said that such allegation will not vitiate, though it should appear that the affidavit had been made in *Cheapside*. *Holt's Rep.* 534.

the

P E R J U R Y.

the said court of *Chancery*, (and then and there having sufficient and competent power and authority to administer an oath to the said *H. T.* in that behalf;) and that the said *H. T.* being so sworn as aforesaid, he the said *H. T.* did, upon his corporal oath, concerning the matters contained in the said answer, before the said *A. A.* then as aforesaid being one of the said masters of the said court of *Chancery*, then and there swear, ^a that so much of the said answer of him the said *H. T.* so as aforesaid produced and exhibited before the said *A. A.* as concerned the act and deed of him the said *H. T.* he the said *H. T.* knew to be true; and that so much of the said answer of him the said *H. T.* as concerned the act and deed of any other person, he the said *H. T.* believed ^b to be true; and that the said *H. T.* not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and minding and intending unjustly to aggrieve the said *M. F.* the complainant aforesaid, did then and there, upon his oath aforesaid, in his answer aforesaid, before the said *A. A.* then and there being one of the said masters of the said court of *Chancery*, as aforesaid, (and having such sufficient and competent power and authority as aforesaid,) falsely, knowingly, ^{*} wickedly, maliciously, wilfully, and corruptly, by his own act and consent, answer, swear, and affirm in writing (amongst other things) in ^c *substance* and to the effect following, that is to say, that he the said *H. T.* did not know the amount and value of the yearly rents, issues and profits of the said premises (meaning the said premises in the said bill of complaint mentioned, and herein also before mentioned), and that he the said *H. T.* never did receive any of the rents, issues, or profits of the said premises (again meaning the said premises in the said bill of complaint mentioned, and herein also before mentioned) and that he the said *H. T.* was not in any manner whatsoever accountable to the complainant (meaning the said *M. F.* the complainant aforesaid) for or by reason of any of the matters or things in the bill mentioned (meaning the aforesaid bill of complaint of her the said *M. F.*), as by the said answer of him the said *H. T.* remaining filed as of record in the said court of *Chancery*, at *Westminster* aforesaid, in the said county of *Middlesex*, (amongst other things) more fully appears; whereas in truth and in fact he the said *H. T.* at the time he so took his oath as aforesaid, well knew the amount and value of the yearly rents, issues, and profits of the said premises, that is to say, the said messuage or dwelling-house, garden, and land, with the appurtenances, in the said bill of complaint mentioned, and herein also above mentioned; and whereas in truth and in fact he the said *H. T.* at that time, to wit, the time he so took his oath as aforesaid, well knew that for divers, to wit, four, years successively next before that time, (the latter of which four years having ended and been determined on the twenty-fourth day of *June*, in the second year aforesaid,) ^{*} the value of the rents, issues, and profits of the same premises amounted to and had been ascertained at the sum of thirty-eight pounds for and in respect of each of the four years, and that the said sum of thirty-eight pounds for each of those years had accrued due to the said *M. F.* and been accounted for to him

[* 546]

Perjury.

Averments.

[* 547]

^a As the oath may be.

^b It is said that a man may be indicted for perjury in swearing that he believes a matter to be true which he knows to be false. *Pedley's case*, *Le. Cro. Ca.* 304.

^c *Vide* note under prec. 2, *ante*, 525.

the

the said *H. T.* by one *J. P.* being, during all the said four years respectively, the under-tenant and possessor of the said premises; and whereas in truth and in fact he the said *H. T.* on divers days and times in and during the space of the said four years, did accept and receive of and from the said *J. P.* as such under-tenant as aforesaid, the sum of one hundred and fifty-two pounds, of lawful money of *Great-Britain*, as being the rents, issues, and profits of the said premises, that is to say, the said messuage or dwelling-house, garden, and six acres of land, with the appurtenances, in the said bill of complaint mentioned, and herein also before mentioned; and whereas in truth and in fact the said sum of one hundred and fifty-two pounds, so received by him the said *H. T.* as aforesaid, was the proper money of the said *M. F.* accruing due to her the said *M. F.* as being the rents, issues, and profits aforesaid; and whereas in truth and in fact he the said *H. T.* at the time he so took his oath as aforesaid, well knew that the said sum of one hundred and fifty-two pounds was the proper money of the said *M. F.* accruing due to her the said *M. F.* in manner and in that behalf aforesaid, and that he the said *H. T.* was, at the time of taking his said oath, and before, liable to account, and ought to account, to and with her the said *M. F.* for the same; and whereas in truth and in fact he the said *H. T.* at the time he so took his oath as aforesaid, was justly and truly indebted to the said *M. F.* in the said sum of one hundred and fifty-two * pounds, as being such rents, issues, and profits as aforesaid, and therefore was at that time accountable to, and ought to have accounted with, her the said *M. F.* for the same; and whereas in truth and in fact, at the time the said *H. T.* so took his oath as aforesaid, she the said *M. F.* had a just and legal claim to, and of right ought to have and receive, all rents, issues, and profits which had accrued, arisen, and become payable from, out, and in respect of the said premises, that is to say, the said messuage or dwelling-house, garden, and land, with the appurtenances, in the said bill of complaint mentioned, and herein also before mentioned, for and during the said four years respectively: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *H. T.* on the said twelfth day of *August*, in the second year aforesaid, at the parish of *St Dunstan* in the *West* aforesaid, in the said county of *Middlesex*, upon his oath aforesaid, before the said *A. A.* then being one of the said masters of the said court of *Chancery*, (and then and there having sufficient and competent power and authority to administer the said oath to the said *H. T.*) by his own act and consent, and of his own most wicked and corrupt mind and disposition, in manner and form aforesaid, did knowingly, falsely, wickedly, maliciously, wilfully, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others in the like case offending, to the great damage of the said *M. F.* and against the peace of our said lord the king, his crown and dignity. ^a

[* 548]

Conclusion.

8. *Indictment*

^a The plaintiff in *Chancery* is a competent witness, coupled with circumstantial evidence and declarations, to convict the defendant of perjury; and the cases of *Rex v. Whiting*, *Salk.* 283, *Holt.* 756, 1 *Lord Raym.* 396; *Rex v. Nunez*, 2 *Str.* 1043; and *Rex v. Ellis*, 2 *Str.* 1104, have been overruled. *Vide Abraham's qui tam v. Bunn*, 4 *Burr.* 2251.

But the reason given in *Burrow* (page 2255) is, that the court of equity will not admit the conviction of perjury as evidence to support a supplemental bill of review. *Vide also Rex v. Broughton*, 2 *Str.* 1229.

On

PRECEDENTS of INDICTMENTS.

That a commission was awarded.

The commission.
[* 552]

As by, &c.

Declared a bankrupt.
[* 553]

said, do further present, That the said *T. C.* so being and remaining a prisoner as aforesaid, for the cause aforesaid, afterwards, to wit, on the twelfth day of *June*, in the sixth year aforesaid, a certain commission of our said lord the king, founded upon the statutes made and provided, then and yet in force, concerning bankrupts, was (upon the petition of the said *J. C.* one *W. S.* one *J. S.* one *H. G.* one *J. J.* and also of one *H. N.* late of *Ware* aforesaid, in the county of *Hertford* aforesaid, blacksmith, preferred to the right honourable *R.* earl of *N.* then lord high chancellor of *Great-Britain*, and upon the said *J. C. W. S. J. S. H. G. J. J.* and *NN.* having made such *affidavit* before a master of the high court of *Chancery* of the truth and reality of their respective debts, specified in and by the said *affidavit* to be due and owing from the said *T. C.* to them respectively, filed with the proper officer, and given such bond to the said then lord high chancellor of *Great-Britain*, with such conditions as are by the statute in that behalf directed to be made and given) awarded and issued out under the great seal of *Great-Britain* against the said *T. C.* by the name and addition of *T. C.* late of *Ware*, in the county of *Hertford*, but now of the *King's Bench* prison, in the county of *Surry*, victualler, dealer and chapman, bearing date at *Westminster* the same day and year last aforesaid, directed to *F. W. S. S.* and *A. M.* esquires, *A. B.* and *J. R.* the younger, gentlemen, his majesty's special commissioners,^a thereby *giving full power and authority to them four, or three of them, to proceed according to the statutes in the said commission mentioned, and all other statutes in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold and customary goods, debts, and other things whatsoever, but also concerning all other persons, who, by concealment, claim, or otherwise, did or should offend touching the premises in the same commission specified, or any part thereof, contrary to the intent and meaning of the said statutes, and to do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of the creditors of the said *T. C.* the bankrupt aforesaid, as towards and for all other intents and purposes, according to the ordinance and provision of the same statutes, as by the said commission (among other things therein contained) more fully appears. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *A. M. A. B.* and *J. R.* the younger, the major part of the commissioners named and authorized in and by the said commission, afterwards, to wit, on the twenty-first day of *June*, in the sixth year aforesaid, at the *Guildhall* of the city of *London*, severally took upon themselves the burthen of the execution of the said commission, and duly qualified themselves for the execution of the said commission, according to the direction of the statute in such case made and provided, and then and there found that the said *T. C.* became a bankrupt before the date and suing forth of the said commission within the true intent and meaning of the several statutes made, and then in force, concerning bankrupts, some or one of them, and did then and there adjudge and declare him the said *T. C.* to be a bankrupt accordingly, to wit, at the *Guildhall* * aforesaid, in the said city of *London*. And the jurors aforesaid, upon their oath aforesaid, do further present, That divers proceed-

^a The commission, and all other proceedings relative to this subject, should be accurately set out. *Vide* title *Bankrupt*, ante.

P E R J U R Y.

ings were afterwards had under and by virtue of the said commission, to wit, at *Guildhall* aforesaid, in the city of *London* aforesaid; and that afterwards, and whilst the said commission continued and was in force, that is to say, on the second day of *September*, in the sixth year aforesaid, at the *Guildhall* aforesaid, in the city of *London* aforesaid, the said *A. M. A. B.* and *J. R.* the younger, the major part of the commissioners named in the said commission, made their certain warrant in writing under their hands and seals, bearing date the day and year last aforesaid, directed to the marshal of the *King's Bench* prison, or his deputy, thereby requiring him [set forth the warrant to the marshal for bringing the bankrupt up, and state by whom he was brought before the commissioners on the thirteenth of September]; and the said *T. C.* was then and there examined by the said *A. M. A. B.* and *J. R.* the younger, being the major part of the said commissioners, touching his estate and effects; and that the said *T. C.* having been so examined by the said major part of the commissioners in manner and form aforesaid, they the said *A. M. A. B.* and *J. R.* the younger, so being the major part of the commissioners acting under and by virtue of the said commission, afterwards, to wit, on the same day and year last aforesaid, at the *Guildhall* aforesaid, in the said city of *London*, made their certain warrant in writing, under their hands and seals, directed [set forth the warrant of commitment]; by virtue of which said last-mentioned warrant the said *T. C.* was afterwards, to wit, on the same day and year last aforesaid, at the parish of *St. George the Martyr*, in the county of *Surry*, remanded to the custody of the marshal of the * *Marshalsea* of our lord the now king, before the king himself, and detained by the said marshal by virtue of the said last-mentioned warrant, and charged with the aforesaid action of the said *J. C.* from thence until the day of next, before the taking of this inquisition. And the jurors aforesaid, on their oath aforesaid, do further present, That the said *A. M. A. B. J. R.* the younger, the major part of the commissioners in the said commission named, on the eleventh day of *July*, in the seventh year of the reign of our said lord the king, at the *Guildhall* aforesaid, in the city of *London* aforesaid, by their certain summons in writing made and signed by them, and directed to [set forth the summons]; and that afterwards, to wit, on the same day and year last aforesaid, the said *E. C.* did, in obedience to such summons appear before the said *A. M. A. B.* and *J. R.* the younger, wife, the major part of the commissioners named in the said commission, to wit, at the said *Guildhall*, in the city of *London* aforesaid, and was then and there, by the said major part of the said commissioners, examined, touching the estate and effects of the said *T. C.* and having been so examined by the said major part of the said commissioners, touching the premises aforesaid, the said *A. M. A. B.* and *J. R.* the younger, being the major part of the commissioners in the said commission named, made their warrant, in writing, under their hands and seals, directed to [set forth the commitment], by virtue of which said last-mentioned warrant the said *E. C.* was afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish of *St. Bride*, otherwise *Bridget*, in the ward of *Farringdon Without*, committed to the custody of the warden of his majesty's prison of the *Fleet*, there to remain until she the said *E. C.* should be further examined by and before the said commissioners in the said commission named, or the major part of them, touching

Commissioners
warrant to bring
up the bankrupt.

Commissioners
warrant, re-
manding the
bankrupt.

[* 554]

Their summons
to bankrupt's
wife,

whom they ex-
amined,

and by their
warrant com-
mitted to the
Fleet prison.

[* 555]

* As the warrant may be.

and

PRECEDENTS of INDICTMENTS.

Both prefer
their petition to
the lord chan-
cellor.

[* 556]

Praying, &c.

[* 557]

As by the peti-
tion appears.

and concerning the premises; and that she the said *E. C.* hath, by virtue thereof, been kept and detained in the custody of the said warden from thence until the day of the taking of this inquisition. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *T. C.* so being in the custody of the marshal of the *Marshalsea* of our lord the now king, before the king himself, in manner and on the occasion aforesaid, and the said *E. C.* so being in the custody of the warden of his majesty's prison of the *Fleet*, in manner and on the occasion aforesaid, they the said *T. C.* and *E. C.* afterwards, to wit, on the twenty-fourth day of *October*, in the seventh year aforesaid, at *Westminster* aforesaid, in the said county of *Middlesex*, preferred their certain petition in writing (in the matter of the said *T. C.* the bankrupt, and in the matter of the said bankruptcy) to the right honourable *C.* lord *C.* baron of *C.* in the county of *Kent*, then and still being lord high chancellor of *Great-Britain*, by the stile and title of the lord high chancellor of *Great-Britain*; and by their said petition (among other things) set forth, that *J. N.* of *Ware*, in the county of *Hertford* aforesaid, blacksmith, son of the above-named *H. N.* had been employed to do the business of the said *T. C.* as a smith for about eight or nine months, before the said *T. C.* was arrested at the suit of the said *J. C.* meaning the arrest of the said *T. C.* above mentioned), and continued so to do for several months afterwards, for which he delivered in his bill about the time the said *T. C.* became bankrupt, to the amount of thirty-one pounds, or * thereabouts, in his own name, to the petitioner *E.* (meaning the said *E. C.*) and then complained to her (meaning the said *E. C.*) how hard it would be for him (meaning the said *J. N.*) as a young beginner in business, to lose that sum (meaning the said thirty-one pounds), or to that effect; and also setting forth, in and by the said petition (among other things), that the petitioner *T. C.* was not indebted to the said *H. N.* in more than the sum of three pounds, or thereabouts, at the time he became a bankrupt, and that the same was so due and owing to him the said *H. N.* for a certain quantity of beans sold by the said *H. N.* to him the said *T. C.* before the said bankruptcy, &c. [here set forth so much of the petition as went to shew that the bankrupt was not indebted to the amount claimed by the petitioning creditors]; and by the said petition the said *T. C.* and *E. C.* did pray the said *C.* lord *C.* then and still being lord high chancellor of *Great-Britain*, that it might be referred to one of the masters of that honourable court (meaning the said high court of *Chancery*), or to the commissioners aforesaid (meaning the commissioners in the said commission of bankruptcy named, or the major part of them), to examine and enquire into the reality of the consideration of the several petitioning creditors debts, and to distinguish what part thereof was contracted prior to, and how much accrued due since the petitioner (meaning the said *T. C.*) became a bankrupt, and that all parties might be examined upon interrogatories, and that the said master, or the major part of the said commissioners, might certify the same, with all circumstances, and their opinions thereon, to the court, (meaning the aforesaid high court of *Chancery*), and that all the proceedings under the said commission (meaning the aforesaid commission of bankruptcy) might be produced at * the hearing of that petition, &c. [here set out the remainder of the prayer with innuendos to explain, as it may be] as by the said petition, relation being thereunto had, will (among other things) more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said petition

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petition of the said *T. C.* and *E. C.* so being presented to the said right honourable *C. lord C.* then and still being lord high chancellor of *Great-Britain* as aforesaid, the said lord chancellor afterwards, to wit, on the said twenty-fourth day of *October*, in the seventh year aforesaid, that is to say, at *Westminster* aforesaid, ordered and appointed (amongst other things) all parties to attend his lordship, on the matter of the said petition, on the then next day of petitions, (the said day of petitions being on the fourth day of *November* then next,) to wit, at *Westminster* aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That the matter of the said petition did afterwards, to wit, on the fourth day of *November*, in the year last aforesaid, to wit, at *Westminster* aforesaid, come on to be heard, and was heard before the said lord high chancellor; and that the said *H. N.* late of *Ware*, in the said county of *H.* blacksmith, who was and is one of the petitioning creditors, on whose petition the said commission of bankrupt issued, and also named in the said petition of the said *T. C.* and *E. C.* wickedly and maliciously contriving and intending unlawfully to aggrieve the said *T. C.* and *E.* his wife, and to cause the said *T. C.* and *E.* his wife to be continued, kept, and detained in prison, and to prevent the aforesaid commission of bankrupt from being superseded, and thereby to ruin the said *T. C.* after presenting of the said petition of the said *T. C.* and *E. C.* and after the said order made thereon by the * said lord high chancellor, and before the matter of the said petition came on to be heard before the said lord high chancellor, that is to say, on the first day of *November*, in the said seventh year of the reign of our said lord the king, at *Tring*, in the county of *Hertford* aforesaid, came in his proper person before *W. H.* gentleman, (he the said *W. H.* then and there being one of the masters extraordinary of the said high court of *Chancery*;) and then and there, before the said *W. H.* so being such master extraordinary as aforesaid, exhibited and produced a certain paper writing, a purporting to be an affidavit of him the said *H. N.* (by the name and addition of *H. N.* of *Ware*, in the county of *Hertford*, blacksmith, one of the petitioning creditors of the said *T. C.*;) and *J. N.* (by the name and addition of *J. N.* of *Ware* aforesaid, blacksmith, son of the said *H. N.*;) and entitled, "In the matter of *T. C.* a bankrupt;" and that the said *H. N.* then and there, in due form of law, was sworn, and did take his corporal oath, upon the holy gospel of God, before the said *W. H.* then and there being one of the masters extraordinary of the said high court of *Chancery* as aforesaid, (and then and there having sufficient and competent power and authority to administer an oath to the said *H. N.* in that behalf;) and that the said *H. N.* being so sworn as aforesaid, he the said *H. N.* did then and there, to wit, on the same day and year last aforesaid, at *Tring* aforesaid, in the said county of *Hertford*, upon his corporal oath, concerning the matters contained in the said affidavit before the said *W. H.* (so then and there being such master extraordinary of the said high court of *Chancery* as aforesaid), swear, that the contents of that his affidavit were true; and that the said *H. N.* not having the fear of God before his * eyes, but being moved and seduced by the instigation of the devil, and minding and intending unjustly to aggrieve the said *T. C.* and *E. C.* as aforesaid, did then and there, upon his oath aforesaid, in his said affidavit before the said *W. H.* then and there being such master extraordinary of the said high court

Order for hearing, &c.

Petition heard before the chancellor.

[* 558]

That *H. N.* came before *W. H.* a master extraordinary in *Chancery*.

Oath.

[* 559]

PRECEDENTS of INDICTMENTS.

Perjury.

[* 560]

Avowments.

[* 561]

of *Chancery* as aforesaid, (and having such sufficient and competent power and authority as aforesaid,) falsely, knowingly, wickedly, maliciously, wilfully, and corruptly, by his own act and consent, depose, swear, and affirm in writing (amongst other things) in ^a *substance* and to the effect following, that is to say, that he the said *H. N.* did not, at any time before the said *T. C.* became a bankrupt, sell and deliver any quantity of beans whatsoever to him the said *T. C.* and that the said *T. C.* before and at the time of issuing the commission of bankrupt so awarded and issued against the said *T. C.* as aforesaid), was justly and truly indebted unto him the said *H. N.* in the sum of one hundred pounds and upwards, of lawful money of *Great-Britain*; and that he the said *H. N.* had been informed by one *Jasper Giles* and one *Peter Wiggins*, who were prisoners with the said *T. C.* in the Bench (meaning the said prison of our said lord the king, commonly called the *King's Bench* prison, in which he the said *T. C.* was so imprisoned as aforesaid, on the occasion in that behalf aforesaid), that the said *T. C.* had mentioned to them the said *Jasper Giles* and *Peter Wiggins*, that he the said *T. C.* and his wife (meaning the said *E. C.*) would be set at large (meaning freed and discharged from and out of the said prisons in which they the said *T. C.* and *E. C.* were so respectively imprisoned as aforesaid on the occasions in that behalf aforesaid), if the said commission of bankrupt * should be superseded upon their petition (meaning the said petition so preferred by the said *T. C.* and *E. C.* for the purpose in that behalf aforesaid); and that he the said *T. C.* and his family would thereby (meaning by having the said commission superseded) secure five hundred pounds for their own use (meaning for the use of himself the said *T. C.* and his family), instead of giving it (meaning the said five hundred pounds) to the *blood-bounds* (meaning the said *H. N.* and the rest of the petitioning creditors above mentioned, and thereby also meaning that the said *T. C.* had meant and endeavoured to cheat and defraud, and intended to cheat and defraud, him the said *H. N.* and the rest of the said petitioning creditors respectively, of the true and just dividends which should and ought to have accrued, and been allowed to them, as such creditors as aforesaid, from and out of the estate and effects of him the said *T. C.* under and by virtue of the said commission of bankrupt), as by the said affidavit of him the said *H. N.* remaining filed as of record in the said court of *Chancery*, at *Westminster* aforesaid, in the said county of *Middlesex*, (amongst other things) more fully appears; whereas in truth and in fact he the said *H. N.* did, before the said *T. C.* became a bankrupt as aforesaid, to wit, on the third day of *November*, in the sixth year aforesaid, at *Ware* aforesaid, in the said county of *Hertford*, sell and deliver a certain quantity of beans to him the said *T. C.* at and for the sum of three pounds two shillings and five-pence, to be therefore paid by the said *T. C.* to the said *H. N.* for the same; and whereas in truth and in fact he the said *H. N.* did, in consequence of such sale, deliver unto him the said *T. C.* at the said time and place of the delivery of the said beans, a certain paper in the handwriting of the said *H. N.* purporting to * be an account or bill of parcel of the said quantity of beans, and signifying that the same were of the value of the said sum of three pounds two shillings and five-pence; and whereas in truth and in fact he the said *T. C.* was not, at the time of issuing the said commission of bankrupt against him the

a Vide note under prec. 2, ante, 525.

PERJURY.

said *T. C.* as aforesaid, indebted unto the said *H. N.* in any sum of money whatsoever, save and except the said sum of three pounds two shillings and five-pence; and whereas in truth and in fact he the said *H. N.* at the time he so took his oath as aforesaid, well knew that he the said *H. N.* had sold and delivered the said quantity of beans to him the said *T. C.* in manner in that behalf aforesaid, and that the said *T. C.* was not, at the time of issuing the said commission of bankrupt as aforesaid, indebted to him the said *H. N.* in any sum of money whatsoever, other than and except the said sum of three pounds two shillings and five-pence; and whereas in truth and in fact the said *Jasper Giles* and *Peter Wiggins* did not nor did either of them, at any time before the said *H. N.* so took his oath as aforesaid, inform him the said *H. N.* that the said *T. C.* had mentioned to them the said *Jasper Giles* and *Peter Wiggins* that he the said *T. C.* and his wife would be set at large if the said commission of bankrupt should be superseded, and that he the said *T. C.* and his family would thereby secure five hundred pounds for their own use, instead of giving it to the *blood-hounds*; and whereas in truth and in fact he the said *H. N.* had not, at any time before he so took his oath as aforesaid, any conversation whatsoever with the said *Jasper Giles* and *Peter Wiggins*, or either of them, or with any other person or persons whatsoever assuming those names, or either of them, touching and concerning the said bankruptcy, or touching and concerning the said *T. C.* and *E.* his wife in * the premises aforesaid; and whereas in truth and in fact he the said *T. C.* had not at any time before the said *H. N.* so took his oath as aforesaid, or at any other time, any conversation whatsoever with the said *Jasper Giles* and *Peter Wiggins*, or either of them, or with any other person or persons whatsoever assuming those names, or either of them: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *H. N.* on the said first day of *November*, in the seventh year aforesaid, at *Tring* aforesaid, in the said county of *Hertford*, upon his oath aforesaid, before the said *W. H.* being such master extraordinary as aforesaid, (and then and there having sufficient and competent power and authority to administer the said oath to the said *H. N.*) by his own act and consent, and of his own most wicked and corrupt mind and disposition, in manner and form aforesaid, did falsely, wickedly, wilfully, maliciously, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others in the like case offending, to the great damage of the said *T. C.* and *E.* his wife, and against the peace of our said lord the king, his crown and dignity.

[* 562]

Conclusion.

9. *Indictment for perjury on the trial of an issue, in an action of assumpsit, at the sittings after term in K B. Westminster.*

Middlesex. **T**HE jurors for our lord the king upon their oath present, That at the sittings of *nisi prius*, holden after the term of *St. Hilary*, on the fourteenth day of *February*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at *Westminster*, in the county of *Middlesex*, in the * great hall of pleas there, called *Westminster-Hall*, according to the form of the * *statute* in such case made and provided, before *William* earl of *Mansfield*, then being chief justice of our said lord the king, assigned to hold pleas in the court of our

That at the sittings, &c.

[* 563]

a certain issue

a *Vide* 24 *Geo.* II. ch. 28, § 5.

said

PRECEDENTS of INDICTMENTS.

came on to be tried.

[* 564]
Z. A. appeared as a witness on behalf of the plaintiff.
Oath.

Material questions.

That the said Z. A. being so sworn, &c.

[* 565]

said lord the king, before the king himself, a certain issue duly joined in the court of our said lord the king, before the king himself, (the said court then and still being at *Westminster* aforesaid, in the said county of *Middlesex*,) between one *A. B.* and one *C. D.* "in a certain ^aplea of trespass on the case upon promises alledged by the said *A. B.* to have been made to him by the said *C. D.* and not performed," in which the said *A. B.* was plaintiff, and the said *C. D.* was defendant, came on to be tried in due form of law, and was then and there tried, by a certain jury of the country in that behalf duly sworn and taken, between the parties aforesaid. And the jurors aforesaid now here sworn, upon their oath aforesaid, do further present, That upon the trial of the said issue so joined between the parties aforesaid, *Z. A.* late * of *Westminster*, aforesaid, in the said county of *Middlesex*, yeoman, appeared as a witness for and on the behalf of the said *A. B.* the plaintiff in the plea above mentioned, and was sworn, and then and there took his corporal oath, upon the holy gospel of God, before the said earl of *Mansfield*, chief justice as aforesaid, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters in question in the said issue, (he the said earl of *Mansfield*, chief justice as aforesaid, then and there having sufficient and competent power and authority to administer an oath to the said *Z. A.* in that behalf.) And the jurors aforesaid now here sworn, upon their oath aforesaid, do further present, That upon the trial of the said issue so joined between the parties aforesaid, certain questions then and there became and were ^bmaterial, that is to say, whether he the said *Z. A.* had any conversation with the said *C. D.* the defendant in the plea above mentioned, on the tenth day of *November* then last, to wit, the tenth day of *November*, in the twenty-first year aforesaid, touching the matters in question in the said issue; and also whether he the said *Z. A.* did on that day, to wit, the same day and year last aforesaid, deliver a paper writing, purporting to be an account settled between the said *A. B.* and the said *C. D.* respecting the matters in question in the said issue; and that the said *Z. A.* being so sworn as aforesaid, not having the fear of God before his eyes, nor regarding the laws of this realm, but being moved and seduced by the instigation * of the devil, and falsely, wickedly, wilfully, corruptly,

a In an indictment recently drawn for perjury, at the trial of an issue in an action for *defamation*, the purport of the declaration was set forth; but the counsel on behalf of the crown deemed it sufficient to state, "in a certain plea of trespass on the case," in which, &c. [*as before*], and it was so exhibited to the grand jury. If for an *assault*, say, "in a certain plea of trespass and assault, that is to say, a certain plea of trespass, wherein it was alledged, in substance, that the said *C. D.* had, with force and arms, assaulted, beat, bruised, wounded, and ill-treated him the said *A. B.*" in which, &c. [*as before*.]

If for a *trespass* on land, say, "in a certain plea of trespass, that is to say, a certain plea of and for trespasses alledged by the said *A. B.* to have been committed by the said *C. D.* with force and arms, in and upon a certain close of him the said *A. B.* at the parish of *E.* in the said county of *M.*" in which, &c. [*as before*]

See the doctrine in § 13 and 14 under this title hereafter.

^b As to the necessity of this, vide 1 Lord Raym. 257; 2 Lord Raym. 889; Holt, 535; 1 Haw. (6th edit.) 323, 324, 325; and *Rex v. Aylett*, 1 Term Rep 67, 68.

It is incumbent on the prosecutor to prove the *materiality* of the perjury. *O. B.* 1784; 1 Haw. (6th edit.) 325, n. 3. Vide also doctrine under this head, *post*, § 13 and 14.

and

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and maliciously contriving and intending, as much as in him lay, to prevent justice, and pervert the due course of law, and to cause a verdict to pass against *C. D.* on the trial of the said issue, and thereby to subject him the said *C. D.* to the payment of sundry heavy costs, charges, and expences, then and there, to wit, on the said fourteenth day of *February*, in the twenty-first year aforesaid, at *Westminster* aforesaid, falsely, wickedly, wilfully, maliciously, and corruptly, and by his own act and consent, did say, depose, swear, and give evidence (amongst other things) to and before the said jurors, so sworn to try the said issue as aforesaid, and the said earl of *Mansfield*, the chief justice aforesaid, in ^a *substance* and to the effect following, that is to say, that he the said *Z. A.* had, on the tenth day of *November* last (meaning the said tenth day of *November*, in the twenty-first year aforesaid), a conversation with the said *C. D.* in the house of one *Philip Jenkins*, at *Islington*, (meaning *Islington*, in the said county of *Middlesex*), respecting the affair (meaning the matters in question in the said issue); and that he the said *Z. A.* did at the same time (meaning the time of the said supposed conversation so by the said *Z. A.* alledged to have been had in the said house of the said *Philip Jenkins* as aforesaid) deliver from the said *A. B.* an account in writing (meaning an account in writing as settled between the said *A. B.* and the said *C. D.* respecting the matters in question in the said issue) to the said *C. D.* who said very well, and then received (meaning that the said *C. D.* at the time of the said supposed conversation received) it (meaning the said supposed account) from the * hands of him the said *Z. A.* whereas in truth and in fact he the said *Z. A.* had not, on the said tenth day of *November*, in the twenty-first year aforesaid, any conversation whatsoever with the said *C. D.* at or in the said house of the said *Philip Jenkins*, at *Islington*, or elsewhere, respecting the affair, that is to say, the matters in question in the said issue, or respecting any matter whatsoever; and whereas in truth and in fact he the said *Z. A.* did not, on the said tenth day of *November*, in the twenty-first year aforesaid, in the said house of the said *Philip Jenkins*, at *Islington* aforesaid, or at any other time or place, in the said month of *November*, in the twenty-first year aforesaid, or at any other time, deliver any paper writing, purporting to be an account as settled between the said *A. B.* and the said *C. D.* respecting the matters in question in the said issue, or any account whatsoever, to the said *C. D.* and whereas in truth and in fact he the said *C. D.* did not, on the said tenth day of *November*, in the twenty-first year aforesaid, or at any other time whatsoever, at or in the said house of the said *Philip Jenkins*, at *Islington* aforesaid, or at any other place, receive an account in writing respecting the matters in question in the said issue, or any account whatsoever, from or from the hands of the said *Z. A.* and whereas in truth and in fact he the said *Z. A.* never had any conversation with the said *C. D.* at any time or place whatsoever before the said fourteenth day of *February*, on which the said issue was so tried as aforesaid: and so the jurors aforesaid now here sworn, upon their oath aforesaid, do say, That the said *Z. A.* on the said fourteenth day of *February*, in the twenty-first year aforesaid, at *Westminster* aforesaid, in the county aforesaid, before the said *William* earl of *Mansfield*, being such justice as aforesaid, (and then and there having sufficient and competent * power and authority to administer the said oath to the said *Z. A.* as aforesaid), by his

did give evidence, &c.

Perjury.

[* 566]

Averments.

Conclusion.

[* 567]

own act and consent, and of his own most wicked and corrupt mind and disposition, in manner and form aforesaid, upon his oath aforesaid, did falsely, wickedly, wilfully, maliciously, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the great damage of the said *C. D.* to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a

10. *Indictment for perjury in giving evidence at the assizes on the trial of an issue in an action of debt against a sheriff's officer, upon stat. 32 Geo. II. ch. 28.*

Caption.

[* 568]

Issue.

THE jurors for our lord the king upon their oath present, That ^b at the assizes holden for the county of *Southampton* aforesaid, on the seventh day of *July*, in the ninth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at * the castle of *Winchester*, in the county aforesaid, before *A. B.* esquire, being one of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, and Sir *C. D.* knight ^c, "one of the justices of our said lord the king of his court of *Common Pleas* at *Westminster*," justices of our said lord the king, assigned to ^d take the assizes in the said county of *Southampton*, according to the form of the statute in such case made and provided, a certain issue duly joined in the court of our said lord the king, before the king himself, (the said last-mentioned court then and still being at *Westminster* aforesaid, in the county of *Middlesex*,) between one *J. L.* and one *J. W.* in a certain ^e plea of "debt of and for one hundred pounds, upon demand, claimed as forfeited under and by virtue of a certain act of parliament made at *Westminster* aforesaid, in the thirty-second year of the reign of the lord *George* the second, late king of *Great-Britain*, &c. intituled, An act for relief, &c. [here set out the title of the act]," in which the said *J. L.* was plaintiff, and the said *J. W.* was defendant, came on to be tried in due form of law, and was then and there tried, by a certain jury of the country in that behalf duly sworn and taken between the parties aforesaid. (a) And the jurors aforesaid now here sworn, upon their oath aforesaid, do further present, That upon the trial of the said issue so joined between the parties aforesaid, * *P. J.* late of *Win-*

(a) *Vide* first prec. under *Subornation post.*

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a Indictment for perjury at the trial of an *ejectment*, at the *King's Bench* sittings after term, in *London*, *Cro. Cir. Aff.* 315.

for perjury at the trial of an issue at bar, in the court of *King's Bench*, directed out of *Chancery*, touching the sanity of a testator, *ibid.* 318.

for perjury at the sittings after term in the court of *Exchequer*, in giving evidence on the trial of an issue joined in an *information*, *ibid.* 430.

^b If judgment be given against a defendant for perjury at the assizes, where the judge of *nisi prius* had no authority to try the cause by reason of a wrong venue, &c. it may be arrested. *Regina v. Rhodes & Cole*, 1 *Ld. Raym.* 886. *Vide* page 4, ante, n.

^c If one of the barons of the *Exchequer*, say, "one of the barons of the *Exchequer* of our said lord the king." *Lil. Ent.* 257.

^d *Vide* stat. 13 *Edw. I.* ch. 30; *Salk.* 454; 3 *Black. Com.* 59; 3 *Ld. Raym.* 111, and *Lil. Ent.* 257.

^e If a common debt, say, plea of "debt of and for one hundred pounds, upon demand."

chester

P E R J U R Y.

chester aforesaid, in the said county of *Southampton*, yeoman, appeared as a witness for and on the behalf of the said *J. W.* the defendant, in the plea above mentioned, and was sworn, and then and there took his corporal oath, upon the holy gospel of God, before the said *C. D.* knight, one of the justices aforesaid, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters in question in the said issue, (he the said *C. D.* being such a justice as aforesaid, then and there having sufficient and competent power and authority to administer an oath to the said *P. J.* in that behalf.) And the jurors aforesaid now here sworn, upon their oath aforesaid, do further present, That upon the trial of the said issue so joined between the parties aforesaid, certain questions then and there became and were ^b *material*, that is to say, whether the said *J. L.* had freely and voluntarily consented to be taken and carried by the said *J. W.* to, and imprisoned in, the common gaol at *Winchester* aforesaid, on the sixth day of *December*, in the seventh year of the reign of our lord the now king (he the said *J. L.* being then arrested by, and in the actual custody of, the said *J. W.* at *Winchester* aforesaid, under and by virtue of a certain writ of our said lord the now king, called a *capias ad satisfaciendum*, duly issued out of the said court of our said lord the now king, before the king himself, at *Westminster* aforesaid, and returnable there at a certain day long since past, against the * said *J. L.* at the suit of one *W. D.* directed to the then sheriff of the said county of *Southampton*, and before the return thereof, to wit, on the said sixth day of *December*, in the seventh year aforesaid, at *Winchester* aforesaid, delivered to the said *J. W.* then being one of the bailiffs of the said sheriff, to be executed in due form of law, under and by virtue of a certain authority to him the said *J. W.* given for that purpose by *C. C.* esquire, then being high sheriff of the said county of *Southampton*); and whether he the said *J. L.* had not, in the presence and hearing of the said *P. J.* requested of the said *J. W.* in whose custody he was on the occasion aforesaid, not to take or convey him the said *J. L.* to the said gaol until the expiration of ^c twenty-four hours next after the said *J. L.* had been arrested by the said *J. W.* as aforesaid; and that the said *P. J.* being so sworn as aforesaid, not having the fear of God before his eyes, nor regarding the laws of this realm, but being moved and seduced by the instigation of the devil, and falsely, wickedly, corruptly, and maliciously contriving and intending, as much as in him lay, to prevent justice, and pervert the due course of law, and unjustly to aggrieve the said *J. L.* the plaintiff in the said issue, and to deprive him of the benefit of his suit then in question, and to subject him to the payment of sundry heavy costs, charges, and expences, then and there, ^d *to wit*, on

That *P. J.* appeared as a witness on behalf of the defendant, and took his oath.

Material questions.

[* 570]

That *P. J.* being so sworn, &c.

^a An indictment for perjury at the assizes may allege the oath to have been taken before one of the judges in the commission, though the names of both are inserted in the caption. *Rex v. Alford*, 1 *Haw.* (6th edit.) 322, n. 2. *Vide* also 2 *Ld. Raym.* 1221. Judgment by *nihil dicit* may be arrested, but never on demurrer. *Ibid.*

^b *Vide* note under prec. 9, ante, 564.

^c By the statute in question, § 1, no bailiff, &c. shall carry his prisoner to gaol within twenty-four hours next after his arrest, unless he shall refuse to be carried to some safe house of his own appointment within some city or town, if arrested there, or within three miles thereof, &c.

^d Where time is not material, it need not be positively averred, and if under a *videlicet*, may be rejected. 1 *Term Rep.* 70, 71.

PRECEDENTS of INDICTMENTS.

- [* 571] the said seventh day of * *July*, in the ninth year aforesaid, at the castle of *Winchester* aforesaid, in the said county of *Southampton*, falsely, wickedly, wilfully, maliciously, and corruptly, and by his own act and consent, did say, depose, swear, and give evidence (amongst other things) to and before the said jurors, so sworn to try the said issue as aforesaid, and the said *C. D.* knight, being such justice as aforesaid, in ^a *substance* and to the effect following, that is to say, that the said *J. L.* did, immediately after he was arrested (meaning so arrested by the said *J. W.* as aforesaid), freely and voluntarily consent to be taken and carried by the said *J. W.* to gaol (meaning to the said gaol of *Winchester* aforesaid, on the occasion in that behalf aforesaid); and that the said *J. L.* then (meaning at the time of the said arrest) said that he would as soon be imprisoned in gaol (meaning the gaol aforesaid) at once as be under the necessity of troubling his friends to relieve him (meaning to relieve him the said *J. L.* touching the said arrest); and that the said *J. L.* did not, at the time of the arrest (meaning the arrest aforesaid), or at any other time, in the presence or hearing of him the said *P. J.* request of the said *J. W.* not to take or convey him the *J. L.* to gaol (meaning to the said gaol of *Winchester* aforesaid, on the occasion aforesaid), until the expiration of twenty-four hours (meaning twenty-four hours next after he the said *J. L.* had been so arrested by the said *J. W.* as aforesaid); whereas in truth and in fact he the said *J. L.* did not immediately after he was so arrested as aforesaid, or at any other time whatsoever on the occasion in that behalf aforesaid, freely and voluntarily consent to be taken and carried by the said *J. W.* to the said gaol at *Winchester* aforesaid; and * whereas in truth and in fact he the said *J. L.* did not, at the time of the said arrest, or at any other time on the occasion aforesaid, say that he would as soon be imprisoned in gaol at once as to be under the necessity of troubling his friends to relieve him; and whereas in truth and in fact the said *J. L.* did, at the time he was so arrested and taken by the said *J. W.* as aforesaid, and often afterwards, on the said sixth day of *December*, in the seventh year aforesaid, at *Winchester* aforesaid, in the presence and hearing of the said *P. J.* request of, and very earnestly solicit, the said *J. W.* not to take or convey him the said *J. L.* to gaol, that is to say, to the said gaol at *Winchester* aforesaid, until the expiration of twenty-four hours, that is to say, twenty-four hours next after the said *J. L.* had been so arrested as aforesaid; and whereas in truth and in fact the said *J. L.* did, immediately after he was so arrested as aforesaid, in the presence and hearing of the said *P. J.* at *Winchester* aforesaid, request of the said *J. W.* to take him the said *J. L.* to the house of one *W. H.* at *Winchester* aforesaid, or any other private dwelling-house or common alehouse there which should be most convenient and agreeable to him the said *J. W.* in order that he the said *J. L.* might avoid being imprisoned in the said gaol under the said arrest, as he the said *J. L.* meant to send for some friends, who would either discharge the debt for which he had been so arrested, or become bail for him on that occasion, long before the expiration of the said twenty-four hours; and whereas in truth and in fact the said *J. W.* being such bailiff as aforesaid, did, within the space of one hour next after such arrest, in a very violent and oppressive manner, contrary to the said request, and without licence or consent, and against

did give evidence, &c.

Perjury.

Averments.

[* 572]

^a *Vide note under prec. 2. ante, 525.*

the will of the said *J. L.* in the * presence of the said *P. J.* take [* 573]
and carry him the said *J. L.* to the said gaol, and then and there,
to wit, within the space of the said hour, on the said sixth day of
December, in the seventh year aforesaid, at *Winchester*, delivered
and left him the said *J. L.* a prisoner in said gaol, against his will, in
the presence of the said *P. J.* charged at the suit of the said *W. D.*
on the occasion in the behalf aforesaid; * and whereas in truth and
in fact he the said *P. J.* at the time he so gave evidence as aforesaid,
well knew that the said *J. L.* had been so taken and carried to the
said gaol, and therein imprisoned as aforesaid, contrary to the re-
quest, and without the licence or consent, and against the will, of
him the said *J. L.* and so the jurors aforesaid now here sworn, upon Conclusion.
their oath aforesaid, do say, That the said *P. J.* on the said seventh
day of *July*, in the ninth year aforesaid, at the castle of *Winchester*
aforesaid, in the said county of *S.* before the said *C. D.* knight,
being such justice as aforesaid, (and then and there having sufficient
and competent power and authority to administer the said oath to the
said *P. J.* as aforesaid,) by his own act and consent, and of his own
most wicked and corrupt mind and disposition, in manner and form
aforesaid, upon his oath aforesaid, did falsely, wickedly, wilfully,
maliciously, and corruptly commit wilful and corrupt perjury, to the
great displeasure of Almighty God, in contempt of our said lord
the king and his laws, * to the great damage of the said *J. L.* to [* 574]
the evil and pernicious example of all others in the like case offend-
ing, and against the peace of our said lord the king, his crown and
dignity.^b

11. *Indictment for perjury, in an affidavit for debt before a commis-
sioner in the country authorized to take affidavits respecting matters
in K. B.^c*

Kent. **T**HE jurors for our lord the king upon their oath present,
That *A. B.* late of *M.* in the county of *K.* yeoman,
being an evil disposed person, and wickedly contriving and intend-
ing to aggrieve, injure, and prejudice one *C. D.* and to cause the
sum of twenty pounds to be indorsed upon a certain process issuing
out of the court of our said lord the king, before the king himself,
called a *latitat*, with intention to cause and procure the said *C. D.*
to be arrested, to appear in the same court, at the suit of the said
A. B. and also with an intent that the said *C. D.* should be com-
pelled to find bail for the said sum of twenty pounds, according to

a If all the assignments of perjury are wrong but one, yet that one will be
sufficient for the court to give judgment upon against the defendant. 2 l.d.
Raym. 887. And it should seem that this doctrine is governed by the follow-
ing reasoning, viz. In a civil action, where one part of the declaration is ill,
and the jury find intire damages, the judgment must be arrested, because the
court cannot apportion them; but on indictments the court assess the fine,
and they will set it only according to those facts which are well laid.
Salk. 385.

b Indictment for perjury at *Chester* assizes, in giving evidence on the trial
of a felon, *Cro. Cir. Aff.* 310.

c The same power is given to commissioners respecting matters in the
courts of *Common Pleas* and *Exchequer*; and persons forswearing themselves
in such affidavits are punishable in the same manner as if the offence had been
committed in open court. *Vide* 29 *Car. II.* ch. 5, § 1 & 2. And by 12
Geo I. ch. 29, § 2, not only these commissioners, but also the officers who
issue process, or their deputies, are authorized to take affidavits holding par-
ties to bail.

the

[* 575]

Perjury.

Averments.

[* 576]

the form of the statute in such case made and provided, he the said *A. B.* on the first day of *July*, in the thirtieth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at *M.* aforesaid, in the said county of *K.* came in his proper person * before *E. F.* gent. then being a commissioner duly authorized to take and receive *affidavits* in, touching, and concerning matters and proceedings of and in the said court of our said lord the king, before the king himself, (the same court then and still being at *Westminster*, in the county of *Middlesex*;) and the said *A. B.* then and there, to wit, on the same day and year aforesaid, at *M.* aforesaid, in the said county of *K.* was duly sworn, and did take his corporal oath, upon the holy gospel of God, before the said *E. F.* (he the said *E. F.* then and there having sufficient and competent power and authority to administer the said oath to the said *A. B.* in that behalf); and that the said *A. B.* being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, before the said *E. F.* upon his oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did depose, swear, and make affidavit in writing (amongst other things) in ^b *substance* and to the effect following, that is to say, that *C. D.* (meaning the said *C. D.* before mentioned), of *M.* in the county of *K.* was justly and truly indebted unto him the said *A. B.* in the sum of twenty pounds, of lawful money of *Great-Britain*, for money lent and advanced, as by the same affidavit, affiled in the said court of our said lord the king, before the king himself, at *W.* aforesaid, (amongst other things) more fully appears; whereas in truth and in fact he the said *C. D.* in the said affidavit named, was not, at the time of making the said affidavit, or at any other time, indebted unto him the said *A. B.* in the aforesaid sum of twenty pounds, in the said affidavit mentioned, for money lent and advanced, or upon any account whatsoever; * and whereas in truth and in fact the said *C. D.* was not, at the time of making the said affidavit, or at any other time, indebted unto him the said *A. B.* in any sum of money whatsoever; and so, &c. [*conclude as in page 542.*]

The DOCTRINE of PERJURY at COMMON LAW.

1. *Perjury, by the common law, seems to be a wilful false oath, by one who, being lawfully required to depose the truth in any judicial proceeding, swears absolutely, in a matter material to the point in question, whether he be believed or not.* 1 Haw. 172, § 1.

2. *This offence must be wilful, as no one ought to be found guilty thereof without clear proof, that the false oath alledged against him was taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable, that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprize or inadvertency, or a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury, which is one of the most infamous and detestable crimes.* Ibid. § 2

3. *It seems to be clearly agreed, that all such false oaths as are taken before those who are any ways intrusted with the administration of publick justice, in relation to any matter before them in debate, are properly perjuries; and it seems also to have been holden*

a *Vide* note under prec. 2, ante, 525.

by

by some, that all such false oaths as are taken before persons authorized by the king to examine witnesses in relation to any matter whatsoever, wherein his honour or interest are concerned, are also punishable as perjuries Ibid. § 3.

4. Not only such persons are indictable for perjury, who take a false oath in a court of record, upon an issue therein joined, but also all those who forswear * themselves in a matter judicially depending before any court of equity, or * spiritual court, or any other lawful court, whether the proceedings therein be of record or not, or whether they concern the interest of the king or subject. 1 Haw. 173, § 3.

[* 577]

5. And it is said to be no way material, whether such false oath be taken in the face of the court, or before persons authorized by it to examine a matter, the knowledge whereof is necessary for the right determination of a suit; and therefore a false oath before a ^b sheriff, upon a writ of inquiry of damages, is as much punishable as if it were taken before the court on the trial of a cause. Ibid.

6. It seems, that any false oath is punishable as perjury which tends to mislead the court in any of their proceedings relating to a matter judicially before them, though it no way affect the principal judgment which is to be given in the cause; as where a person who offers himself to be bail for another knowingly and wilfully swears that his substance is greater than it is. Ibid.

7. All such oaths as any way tend to abuse the administration of public justice are properly perjuries; and where one takes a false oath before a justice of the peace, in order to induce him to compel another to find sureties for the peace, &c. Ibid.

8. But it has been questioned how far any magistrate is justifiable in taking a voluntary affidavit in any extrajudicial matter, as is said to be now too frequent upon every petty occasion; since it is more * than possible, that by such idle oaths a man may frequently in foro conscientiarum incur the guilt, and at the same time evade the temporal penalties of perjury. 4 Black. Com. 137. Vide 3 Bur. Just. title Oaths.

[* 578]

9. The oath ought to be taken before persons lawfully authorized to administer it; for if it be taken before persons acting merely in a private capacity, or those pretending to a legal authority of administering such oath, but having in truth no such authority, it is not punishable as perjury. 3 Bac. Abr. 814, 815.

10. Neither a false oath in a mere private matter, as in making a bargain, &c. nor the breach of a promissory oath, whether public or private, are punishable as perjury. Ibid. 814.

11. It is said not to be material whether the fact which is sworn be in itself true or false; for however the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears to it, his offence is altogether as great as if it had been false, inasmuch as he wilfully swears that he knows a thing to be true which, at the same time, he knows nothing of, and

* Perjury committed in the spiritual court is punishable there; but it has been doubted whether an indictment will lie for it at common law. 1 Lord Raym. 451. Though it has been holden, that an action at law will lie for an accusation of perjury in that court. 4 Bac. Abr. 484.

^b So it is as to an oath before a grand jury. See the note under the next precedent for endeavouring to suborn, &c. See also the precedent in Cro. Cir. Aff. 323.

impudently

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impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition which any stranger might make as well as himself. 1 Haw. 175, § 6.

12. No oath shall amount to perjury, unless it be sworn absolutely and directly; and therefore he who swears a thing according as he thinks, remembers, or ^a believes, cannot, in respect of such an oath, be found guilty of perjury. Ibid. § 7.

[* 579]

13. It is said to have been bolden, not to be material on an indictment of perjury at common law, whether the false oath were at all credited, or whether the party in whose prejudice it was intended ^{*} were in the event any way aggrieved by it or not, inasmuch as this is not a prosecution grounded on the ^b damage to the party, but on the abuse of public justice. 1 Haw. 177, § 9.

14. But it seems clear, that if the oath for which a man is indicted for perjury be altogether immaterial, and neither any way ^c pertinent to the matter in question, not tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot amount to perjury, because it is merely idle and insignificant. Ibid. 175, § 8.

15. It has been settled, that justices of the peace have no jurisdiction over perjury at common law. 2 Haw. 40; Salk. 406. But under the statute of Elizabeth they have.

[* 580]

* How restrained and punished by statute.

Penalty for procuring of wilful perjury,

By stat. 5 Eliz. ch. 9, § 3, If any person or persons shall unlawfully and corruptly procure any witness or witnesses, by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever depending in suit and variance by any writ, action, bill, complaint, or information, in any wise touching or concerning any lands, tenements, or hereditaments, or any goods, chattels, debts, or damages, in any of the courts therein mentioned, [being of almost every description, except the ecclesiastical courts;] or shall unlawfully and corruptly procure or suborn any witness or witnesses, which shall be sworn to testify in perpetuam rei memoriam, then every such offender or offenders shall

^a But per Lord Mansfield—It is certainly true, that a man may be indicted for perjury in swearing that he believes a matter to be true which he must know to be false. *Pedley's case*, Le. Cro. Ca. 304.

^b It is however said, that a man may as well be guilty of perjury by a false oath, tending to extenuate or aggravate the damages, as by an oath which is direct to the fact in issue (1 Haw. 176); which might have induced the drawers of indictments formerly to set out the whole of the pleadings in which the issues were joined, in order to shew the extent and certainty of the damages which the plaintiffs claimed: but as the greater stress appears to be laid on the intention to pervert the due course of law, it seems sufficient to state that a matter cognizable in court came duly before the judge and jury to be tried, (as in prec. 9 and 10, ante,) within the intention of the act of 23 Geo. II. ch. 11. See the abstract of this statute hereafter.

^c Per Holt—It is not necessary, that the evidence be sufficient for the plaintiff to recover upon; it is enough if it be circumstantial; and in the nature of the thing an evidence may be very material, and yet not full enough to prove directly the point in question. 2 Ld. Raym. 889. But it is necessary to state in the indictment, that the question was material.—See the authorities referred to in page 564.

for

PERJURY.

for his, her, or their said offence, being thereof lawfully convicted or attainted, lose and forfeit the sum of forty pounds.

forty pounds,

By § 4. Persons so convicted or attainted, not having goods or other property to the value of the penalty, shall suffer imprisonment for the space of half a year, and stand upon the pillory for one hour in some market-town next adjoining to the place where the offence was committed.

imprisonment and pillory for want of goods, &c.

§ 5. Those convicted shall not be received as witnesses in any court of record, until such time as the judgment given against them be reversed by attainr or otherwise; and upon every such reversal the parties grieved shall recover their damages, &c. [as in the next section.]

Not to be allowed as witnesses until, &c.

§ 6. He who is ^a convicted or attainted of perjury by his deposition, &c. shall forfeit twenty pounds, ^{*} and be imprisoned for the space of six months; and the oath of such person shall not be received in any court of record until the judgment be reversed by attainr or otherwise; and upon every such reversal the party grieved shall recover his damages against the person who procured the said judgment so reversed to be given against him, by an action on the case.

Penalty as to him who commits perjury, 20l. and imprisonment, &c. [* 581] Reversal of judgment, &c.

§ 7. If the offender has not goods sufficient to satisfy the twenty pounds, he shall be set on the pillory in some market-place near, &c. and there to have both his ears nailed, and from thenceforth be disabled from being sworn in any court of record, until such time as the judgment shall be reversed, upon which he shall recover his damages as before mentioned.

Upon non-payment of forfeiture, pillory, and to have his ears nailed.

§ 8. As to whom forfeitures shall be given, and how recovered.

He may be a witness on reversal, &c. and recover, &c.

—10. Directs that the statute shall be proclaimed at the assizes.—11. The act not to extend to any ecclesiastical court.—12. Gives a remedy against persons who (having been served with process and tendered their expences) refuse to attend as witnesses on the trials of issues joined in causes depending in any court of record, without shewing some reasonable impediment to the contrary.—13. By this the authority to punish perjury, given by stat. 11 Hen. VII. ch. 25, is saved.

Substance of sections 8, 10, 11, 12, and 13.

§ 9. As well the judge and judges of every of the courts where any such suit is or shall be, and whereupon any such perjury is or shall be committed, as also the justices of assize and gaol-delivery in their several circuits, and the justices of the ^b peace in every county within this realm, or in Wales, at their quarter-sessions, both within liberties and without, shall have full power and authority to enquire of all offences and defaults committed contrary to this act, by inquisition, presentment, bill, or information, or otherwise, lawfully to hear and determine the same, and to give ^{*} judgment, award process, and execution of the same, according to the course of the laws of this realm ^c.

Who shall have authority to hear and determine, &c.

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^a This is good cause of challenge, if he be a juror. 2 Harw 417, § 25.

^b Vide Regina v. Yarrington, Salk. 406.

^c If the defendant perjures himself in his answer in Chancery, or the like, he is not punishable upon this statute, for it extends only to witnesses; but he may be punished for it at common law, 3 Inst. 166. Vide also Cro. Jac. 8.

An indictment on the statute must exactly pursue the words of it, 3 Bac. Abr. 817, Cro. Eliz. 147; and should conclude, contrary to the form of the statute, &c. 2 H. H. 191, 192. Therefore prosecutions for this offence are chiefly at common law, being recommended as most advisable. Vide 1 Harw. 180. Vide also 6th edit. 327, n. 5.

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Persons guilty of perjury, or subornation of perjury, may be transported for seven years,

and if they escape, break prison, or return, &c. shall suffer death.

By stat. 2 Geo. II. ch. 25, § 2, it is enacted, *That, besides the punishment already to be inflicted by law for so great crimes, it shall and may be lawful for the court or judge, before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, according to the laws now in being, to order such person to be sent to some house of correction, within the same county, for a time not exceeding seven years, there to be kept to hard labour during all the said time, or otherwise to be transported to some of his majesty's plantations beyond the seas for a term not exceeding seven years, as the court shall think most proper, and thereupon judgment shall be given, That the person convicted shall be committed or transported accordingly, over and beside such punishment as shall be adjudged to be inflicted on such person, agreeable to the laws now in being; and if transportation be directed, the same shall be executed in such manner as is or shall be provided by law for the transportation of felons; and if any person so committed or transported shall voluntarily escape or break prison, or return from transportation before the expiration of the time for which he shall be ordered to be transported as aforesaid, such person, being thereof lawfully convicted, shall suffer death as a felon, without benefit of clergy, and shall be tried for such felony in the county where he so escaped, or where he shall be apprehended*

Made perpetual by 9 Geo. II. ch. 18.

[* 583] * The ACT to render PROSECUTIONS for PERJURY, and SUBORNATION OF PERJURY, more easy and effectual.

As to the person committing perjury.

By stat. 23 Geo. II. ch. 11, § 1, it is enacted, "*That in every information or indictment to be prosecuted against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath was taken, (averring such court or person or persons to have a competent authority to administer the same,) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed; any law, usage, or custom to the contrary notwithstanding.*"

As to subornation of perjury.

§ 2. *That in every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or*

[* 584]

^a On a trial for perjury in an answer in chancery it is not necessary to prove the identity of the person who swore the oath; it is sufficient if the hand-writing be proved, and that the master proves that the jurat was subscribed by him (the master), as being sworn before him. 3 Bac. Abr. 818. n. 2 Burr. 1189. Vide also 1 Haw. (6th edit.) 334, n. (7). The court are very cautious in granting a certiorari to remove an indictment for this offence. *Ibid.* n. (8).

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was agreed or promised to be committed; any law, &c. [as before.]

§ 3 By this, The justices of assize, nisi prius, or general gaol-delivery, or any of the great sessions in Wales, or of the counties palatine (during the sitting of the court, or within twenty-four hours after), may direct prosecutions against persons, examined before them, committing of perjury, and assign the prosecutor counsel; and such prosecution shall be carried on without any tax, duty, or fees in court, or to any officer of the court; and the clerk of assize, or his associate or prothonotary, or other proper officer of the court, shall, without fee or reward, give the party injured, or other person undertaking such prosecution, a certificate of the same being directed, together with the names of the counsel assigned by the court, &c.

Substance of the remainder of the act, directing perjured witnesses to be prosecuted without fees, &c.

Touching the punishment of persons convicted of perjury, &c. acting as attornies, solicitors, or agents, in courts of law or equity, 12 Geo. I. ch. 26, § 4; as to bankrupts, 1 Jac. I. ch. 15, § 9; others beside the bankrupt, *ibid.* § 11, 5 Geo. II. ch. 30, § 29; witnesses in courts martial respecting naval offences, 22 Geo. II. ch. 33, § 17; electors in London, 11 Geo. I. ch. 18, § 3; same, and returning officers, in counties, cities, boroughs, &c. 2 Geo. II. ch. 24, § 5 & 6; insolvent debtors, 18 Geo. III. ch. 52, § 36; 21 Geo. III. ch. 63, § 31. Under the two last statutes the offence is made felony within clergy; and gaolers, being convicted of perjury, forfeit 50*l.* Vide *prec.* 11, ante, as to affidavits before commissioners, &c.

Attornies, bankrupts, courts-martial, electors, insolvent debtors, &c.

Quakers making solemn^a affirmation wilfully and corruptly, shall suffer as in cases of perjury, 8 Geo. I. ch. 6, § 2. Vide also 22 Geo. II. ch. 46, § 36.

* Not to give evidence in criminal cases, or serve on juries, 7 [* 585] & 8 Will. III. ch. 34, § 6.

The following case may afford some information as to proceedings authorized by the statute of *Eliz.* &c.

Rex v. Thorogood, Trin. 9 Geo. I. C. B. 8 *Mod.* 179.

The defendant having made an affidavit in the court of Common Pleas, and the truth thereof being controverted, he was summoned to appear in court, and accordingly did appear in Easter term last, and confessed that he made the affidavit, and that it was false.

Perjury punishable upon confession without indictment or information, &c.

Whereupon the court recorded his confession, and ordered that he should be taken into custody, and put into the pillory for perjury.

And now it was insisted on by his counsel, That this could not be done upon his own confession, because it is not a conviction, but only matter of evidence, for he ought judicially to be brought before the court by indictment, and therefore his confession ought not to have been recorded; besides, the court of Common Pleas hath no jurisdiction in criminal cases, and therefore if it hath appeared on record that the defendant was perjured, the court could not have punished him.

To argue, that a criminal shall not be convicted on his own confession, is not only a new, but very strange doctrine, because the confession of a crime is the strongest evidence of guilt.

^a The affirmation, "I A. B. do solemnly, sincerely, and truly declare and affirm." 8 Geo. I. ch. 6. § 1.

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[* 586] *It is likewise very strange to object, that the court of Common Pleas hath no jurisdiction in this case, because the punishment by pillory is by virtue of the statute of 5 Eliz. ch. 9; and the court having given sentence accordingly shews, that they proceeded on that statute, by which power is given to any court, where the perjury is committed, to punish the offender; so that it is plain the court hath a jurisdiction, * especially since it is provided by that very statute, that it shall not extend to any ecclesiastical court, which, being a negative pregnant, is a full proof that all other the king's courts may punish such offenders, and even those who shall be convicted by their own confession; for the statute gives power to hear and determine by inquisition, information, bill, presentment, or otherwise, and to give judgment, and award execution, &c. Now by the word otherwise the confession of the party may be intended. Besides, if that court cannot punish the defendant by virtue of the statute of 9 Eliz. he might be punished at common law; for perjury is an offence at common law, and any court may punish such a criminal for an offence committed in facie curiæ, which was the better opinion in ^a Bushell's case, though Vaughan doubted it. But, notwithstanding what was said by the defendant's counsel, he was put in the pillory the last day of term.*

SUBORNATION of PERJURY.

Indictment for endeavouring to suborn a person to give evidence on a trial at the assizes.

[* 587] *Shropshire.* **T**HE jurors for our lord the king upon their oath present, That at the assizes, &c. [*here state the caption of the assizes holden at Shrewsbury on the 16th of March, 21st Geo. III. &c. as in prec. 10, ante, until you come to the letter (a) noted in the margin; the issue here being between T. G. and T. E. in an action of assault. See the directions under prec. 9.*] And the jurors aforesaid now here sworn, upon their oath aforesaid, do further present, That before the trial * of the said issue, and during the time the same was depending, to wit, on the fifteenth day of March, in the twenty-first year aforesaid, *H.* the wife of the said *T. G.* late of *Holliwell*, in the county of *Flint*, grocer, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, and wickedly contriving and intending, as much as in her lay, to prevent justice, and pervert the due course of law, and minding and intending unjustly to aggrieve the said *T. E.* the defendant above named, and wickedly to cause and procure the said *T. E.* to be convicted of the premises alledged against him in the said issue, and thereby to subject him to the payment of great sums of money for damages and costs to be recovered against him in the suit then in question between him and the said *T. G.* as aforesaid, then and there, to wit, on the same day and year last aforesaid, at *S.* aforesaid, in the said county of *Salop*, did unlawfully and wickedly solicit, instigate, and as much as in her lay, endeavour to persuade one *M. T.* spinster, to be and appear as a witness on the part and behalf of the said *T. G.* the plaintiff aforesaid, at the trial of the said issue so as aforesaid joined, and upon the

^a *Vaugh.* 152.

SUBORNATION of PERJURY.

same trial falsely to swear and give in evidence to and before the jurors of the said jury so sworn and taken between the said parties, to try the said issue as aforesaid, of and concerning the premises alleged by the said *T. G.* against him the said *T. E.* in the said issue, in substance and effect following, that is to say, that the face of the said *T. G.* was blue after the blow (meaning a supposed blow alleged in the declaration of the said *T. G.* contained in the said issue to have been given and struck by the said *T. E.* the defendant aforesaid, in and upon him the said *T. G.*); whereas in truth and in fact the face of the said *T. G.* was not blue, nor any * ways changed in colour, by reason of any blow he had received from the said *T. E.* nor did he the said *T. E.* ever assault the said *T. G.* or give him the said *T. G.* any blow, so as to cause the face of the said *T. G.* thereby to become blue, or any ways changed in colour; but in truth and in fact the said *H.* at the time she so solicited, instigated, and endeavoured to persuade the said *M. T.* to swear and give in evidence as is aforesaid, had caused the face of the said *T. G.* to be stained with ink, to wit, at *S.* aforesaid, in the said county of *Salop*, and she the said *H.* did thereupon, then and there tell the said *M.* that she the said *M.* might safely swear the face of the said *T. G.* was blue after the blow, in contempt of our said lord the king and his laws, in manifest subversion of justice, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a

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conclusion.

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Indictment (laid in the liberty of Westminster) for endeavouring to suborn a bailiff to swear a rescue in a matter depending in the Palace court.

^a *City, Borough, and Town* } THE jurors for our lord the king
of Westminster, in the } upon their oath present, That
County of Middlesex. } *J. D.* late of the parish of *St. Clement Danes*, in the county of *Middlesex*, and within the * liberty of the dean and chapter of the collegiate church of *St. Peter, Westminster*, the city, borough, and town of *Westminster*, in the county of *Middlesex*, yeoman, being a wicked and evil-disposed person, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and contriving, and falsely, wickedly, and maliciously intending, by unlawful ways and means, one *F. A.* esquire, of his monies to deceive and defraud, and to subject him the said *F.* to the payment of one thousand pounds, on the twelfth day of *March*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, within the liberty aforesaid, in the county aforesaid, falsely, wickedly, and maliciously did solicit, instigate, and, as much as in him lay, endeavour to persuade, procure, and cause one *A. E.* of the parish aforesaid, in the county aforesaid, gentleman,

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^a At *Salop* Lent assizes, 1784, one *Lea* was tried upon an indictment for endeavouring to persuade a person to swear falsely before the grand jury, and found guilty; whereupon his counsel moved in arrest of judgment, contending that it was no offence to swear falsely before them, the oath having been (of course) administered before the judge in court; but, the motion being refused, *Lea* was fined 20*l.* and ordered to be imprisoned for three months.

^b *Vide* Practice of Sessions, ante, 32.

for

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for divers rewards and promises, falsely, unlawfully, and wickedly to swear, and, contrary to truth and justice, return a rescue upon a process in and respecting a certain action in the court of his majesty's palace of *Westminster*, holden at the parish of *St. George, Southwark*, in the county of *Surry*, for the recovery of one thousand pounds, wherein he the said *J. D.* was plaintiff, and *R. W.* esquire, was defendant; and the said *J. D.* did then and there, to wit, on the same day and year aforesaid, at the parish of *St. C. D.* aforesaid, within the liberty aforesaid, in the said county of *M.* falsely, unlawfully, and wickedly promise the said *A. E.* that he the said *J. D.* would pay the sum of twenty pounds to the said *A. E.* and would likewise give a bond of indemnity to him the said *A. E.* if he the said *A. E.* would swear that he had arrested the said *R. W.* at the suit of the said *J. D.* for one thousand pounds (meaning the

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* above mentioned one thousand pounds), and would also swear that he the said *F. A.* had forcibly, upon and after such arrest, and against the will of the said *A.* rescued the said *R. W.* out of the custody of him the said *A. E.* and the said *J. D.* did then and there, for the purpose in that behalf aforesaid, wickedly and unlawfully tender and offer to pay to him the said *A. E.* the said sum of twenty pounds and upwards, (he the said *A. E.* being at that time a person duly authorized to arrest persons upon, and procure a legal return to be made to and upon, any process issuing out of and returnable in the said *Palace* court;) whereas in truth and in fact he the said *J. D.* at the time when he so solicited, instigated, and endeavoured to persuade, procure, and cause the said *A. E.* to swear the said rescue against the said *F. A.* in manner as aforesaid, then and there well knew that he the said *A. E.* could not truly swear that the said *R. W.* had been arrested by the said *A. E.* at the suit of him the said *J. D.* for one thousand pounds as aforesaid; and whereas in truth and in fact he the said *J. D.* then and there likewise well knew that the said *A. E.* could not truly swear that he the said *R. W.* had been rescued by the said *F. A.* out of the custody of the said *A. E.* at the suit of the said *J. D.* as aforesaid, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a

[* 591]

*Subornation of perjury, by the common law, seems to be an offence in procuring a man to take a false oath amounting to perjury. who actually taketh such oath; * but it seemeth clear, that if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain, that he is liable to be punished not only by fine, but also by infamous corporal punishment.* 1 *Haw.* 177.

Vide stat. 5 *Eliz.* ante, § 3.

For further information on the doctrine of perjury see the several references in the notes under the precedents, and 1 *Haw.* (6th edit.) ch. 69.

^a Indictment against a person for suborning a woman to swear a bastard child, before a justice, to an innocent person. *Cro. Cir. Aff.* 329.

Indictment for piracy, on stat. 11 & 12 Will. III. ch. 7, § 9, by causing a revolt in a merchant's ship, and running away with the same, and the apparel, tackle, and goods thereof.

Admiralty of England. } THE jurors for our lord the king upon their First count, for oath present, That *E. J.* late of *London*, mariner, *N. W.* late of the same, mariner, and *L. S.* late of the same, mariner, on the seventh day of *September*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, upon the high sea, within the jurisdiction of the admiralty of *England*, about half a league distant from *Leghorn* in *Italy*, in parts beyond the seas, then being mariners, in and on board a certain merchant-ship called the *Dove*, belonging and appertaining to subjects of our said lord the king (to the jurors aforesaid as yet unknown), whereof one *B. H.* a subject of our said lord the king, then and there was master, ^[* 592] *piratically* ^[* 592] *and feloniously* did endeavour to make, and did make, a revolt in the same ship, (the said *B. H.* then and there being master of the same ship as aforesaid,) against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath Second count, aforesaid, do further present, That the said *E. J.* *N. W.* and *L. S.* for stealing and on the said seventh day of *September*, in the year aforesaid, then being subjects of our said lord the king, and mariners in the said ship called the *Dove*, belonging and appertaining to subjects of our said lord the king (to the jurors aforesaid as yet unknown) with force and arms, upon the high sea aforesaid, about half a league distant from *Leghorn* aforesaid, in and on board the said ship called the *Dove*, whereof the said *B. H.* a subject of our said lord the king, then and there was master as aforesaid, did betray the trust in them reposed as mariners of the same ship, and then and there, upon the high sea aforesaid, within the said jurisdiction, with force and arms, did turn pirates, and the same ship, and the apparel and tackle thereof, of the value of two hundred pounds, of lawful money of *Great-Britain*, and one hundred hogsheads of sugar, of the value of one hundred pounds, of like lawful money; one hundred and fifty bales of tobacco, of the value of one hundred pounds; and two bales of velvet, of the value of one hundred and fifty pounds, of like lawful money, of the goods and chattels of certain subjects of our said lord the king (to the jurors aforesaid as yet unknown), then and there being in the said ship, under the care and custody and in the possession of the said *B. H.* as master of the said ship, then and there, upon the high sea aforesaid, within the jurisdiction of the admiralty aforesaid, about the distance of half a ^[* 593] league from *Leghorn* aforesaid, with force and arms, from the care, custody, and possession of the said *B. H.* *piratically* and *feloniously* did steal, take, and run away with, (they the said *E. J.* *N. W.* and *L. S.* then and there being mariners of the said ship, and in and on board the said ship, on the high sea as aforesaid,) against the form

^a An indictment for this offence must contain these words, and alledge the fact to have been committed upon the sea. 1 *Haw.* (6th edit.) 154, § 10.

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of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. ^a

The crime of piracy, or robbery and depredation upon the high seas, is an offence against the universal law of society; a pirate being, according to Sir Edward Coke, ^b hostis humani generis. As, therefore, he has renounced all the benefits of society and government, and reduced himself afresh to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him: so that every community hath a right, by the rule of self-defence, to inflict that punishment upon him which every individual would in a state of nature have been otherwise entitled to do, for any invasion of his person, or personal property.

⁴ Black Com. 71.

*The king of England has not only an empire and sovereignty over the British seas for the punishment of piracy, but, in concurrence with other princes and states, an undoubted jurisdiction and power in the most remote parts of the world. If any person, therefore, native or foreigner, christian or infidel, Turk or Pagan, with whose country this nation is in amity, trade, or correspondence, shall be robbed or spoiled in the narrow or other seas, whether the Mediterranean, Atlantic, Southern, or any branches thereof, either on this or other side of the Line, it is * piracy within the limits and cognizance of the Admiralty sessions. 1 Haw. (6th edit.) 152, n. 1.*

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Piracies and depredations at sea are said to be capital offences by the civil law; and are also said to have been punishable at common law before the 25th of Edw. III. stat. 5, ch. 2, as petit treason, if committed by a subject, and as felony if committed by a foreigner; but it seems agreed, that after that statute, by which all treason is confined to the particulars therein mentioned, it was cognizable only by the civil law. 3 Bac. Abr. 819 ^c

*But this proving very inconvenient, because by that law no offender shall have judgment of death without his own confession, or direct proof by ^d eye-witnesses, it was enacted by stat. 28 Hen. VIII. ch. 15, § 1, That all treasons, felonies, robberies, &c. upon the sea, or in any haven, river, ^e creek, or place, where the admiral or admirals have or pretend to have power, authority, or jurisdiction, shall be inquired, tried, heard, determined, and judged in such shires and places in the realm as shall be limited by the king's commission or commissions to be directed for the same, in like form and condition as if such offence or offences had been committed or done in or upon the land, and such commissions shall be had under the king's great seal, directed to the admiral or admirals, or his or their lieutenant, deputy, and deputies, and to three or four such other substantial persons as shall be named or appointed by the lord chancellor of England * for the time being, from time to time, and at*

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^a See the indictment for piracy against one Kidd, &c. taken from the State Trials, for running away with a strange ship, &c. Cro. Cir. Aff. 486. See also the first note in next page.

^b 3 Inst. 113.

^c How to describe the offence, if prosecuted according to the course of the civil law, and how, if at common law, cognizable by virtue of 28 Hen. VIII. &c. 1 H. H. 355. Attainder by the former works no corruption of blood otherwise by the latter. *Ibid.* Vide also H. & B. Co. Lit. 391, and 1 Haw. (6th edit.) 154, n. 2.

^d Vide 3 Bac. Abr. 819, and 1 Haw. (6th edit.) 152, § 3.

^e This statute extends not to offences done in creeks or ports within the body of a county. 3 Bac. Abr. 820.

as need shall require, to hear and determine such offences, after the common course of the laws of this realm, used for treasons, felonies, &c. done and committed upon the land within this realm

§ 2. That if any person or persons happen to be indicted for any such offence done upon the seas, or in any other place above limited, then such order, process, judgment and execution shall be used, had, done, and made to and against every such person and persons so being indicted, as against traitors, felons, &c. for any treason, felony, &c. upon the land, as by the laws of this realm is accustomed.

§ 2 & 3. That such as shall be convicted of any such offence by verdict, confession, or process, by authority of any such commission, shall have and suffer such pains of death, losses of lands, goods, and chattels, as if they had been attainted and convicted of such offence done upon the lands, and also be excluded from the benefit of clergy.^a

By stat. 11 & 12 Will. III. ch. 7, § 1, it is (amongst other things) enacted, That all piracies, felonies, and robberies committed in or upon the sea, or in any haven, river, creek, or place where the admiral has jurisdiction, may be tried at sea, or upon the land, in any of his majesty's islands, plantations, &c. to be appointed by the king's commission, under the great seal, or the seal of the admiralty, directed to any of the admirals, &c. and such persons and officers by name, or for the time being, as his majesty shall think fit, who shall have power, jointly or severally, by warrant under the hand and seal of any of them, to commit any person against whom information of any such offences shall be given upon oath, and * to call a court of admiralty, which shall consist of seven persons at the least, (and shall proceed in the trial of the said offenders, according to such directions as are set forth at large in the said statute.) Vide § 4.

[* 596]

§ 8. That if any of his majesty's natural-born subjects or denizens of this kingdom shall commit any piracy or robbery, or any act of hostility, against other his majesty's subjects, upon the sea, under colour of any commission from any foreign prince or state, or pretence of authority from any person whatsoever, such offender and offenders shall be deemed and adjudged, and taken to be pirates, felons, and robbers; and they, and every of them, being duly convicted thereof, according to this act, or the aforesaid statute of king Henry the eighth, shall have and suffer such pains of death, loss of lands, goods, and chattels, as pirates, felons, and robbers upon the sea, ought to have and suffer.

§ 9. That if any commander or master of any ship, or any seaman or mariner, shall, in any place where the admiral hath jurisdiction, betray his trust and turn pirate, enemy, or rebel, and piratically and feloniously run away with his or their ship or ships, or or any barge, boat, ordnance, ammunition, goods, or merchandizes, or yield them up voluntarily to any pirate, or bring any seducing message from any pirate, enemy, or rebel, or consult, combine, or confederate with, or attempt or endeavour to corrupt, any commander, master, officer, or mariner, to yield up or run away with any ship, goods, or merchandizes, or turn pirate, or go over to pirates; or if any person shall lay violent hands on his command-

^a No offence is punishable by virtue of this act as piracy, which would not have been felony if done on the land, and consequently the taking of an enemy's ship, by an enemy, is not within the statute. 1 Haw. (6th edit.) 154. § 10.

^a Indictment for this offence, Cro. Cir. Aff. 488.

[* 597]

der, whereby to binder him from fighting in defence of his ship and goods committed to his trust, or shall confine his master, or make or endeavour to make a revolt in the ship, he shall be adjudged to be a pirate, felon, and robber; and being convicted thereof, according to the direction of this * act, shall have and suffer pains of death, loss of lands, goods, and chattels, as pirates, felons, and robbers upon the seas ought to have and suffer.

§ 10. That all and every person and persons whatsoever, who shall, either on the land or upon the seas, knowingly or wittingly set forth any pirate, or aid and assist, or maintain, procure, command, counsel, or advise any person or persons whatsoever, to do or commit any piracies or robberies upon the seas, and such person and persons shall thereupon do or commit any such piracy or robbery, then all and every such person or persons whatsoever, so as aforesaid setting forth any pirate, or aiding, or assisting, maintaining, procuring, commanding, counselling, or advising the same, either on the land or upon the sea, shall be adjudged to be accessory to such piracy and robbery done and committed; and further, that after any piracy or robbery is or shall be committed by any pirate or robber whatsoever, every person and persons who, knowing that such pirate or robber has done or committed such piracy and robbery, shall, on the land or upon the sea, receive, entertain, or conceal any such pirate or robber, or receive, or take into his custody, any ship, vessel, goods, or chattels, which have been by such pirate or robber piratically and feloniously taken, shall be by this statute likewise adjudged to be accessory to such piracy and robbery; and that all such accessaries to such piracies and robberies shall be enquired of, tried, heard, determined, and adjudged, after the common course of the laws of this land, according to the said statute of Hen. VIII. as the principals of such piracies or robberies may be, and no otherwise; and being thereupon attainted, shall suffer such pains of death, loss of lands, goods, and chattels, and in like manner as the principals of such piracies, robberies, and felonies ought to suffer according to the said statute of Hen. VIII. which is declared to be in full force, any thing in this act to the contrary notwithstanding.

[* 598]

* By stat. 4 Geo. I. ch. 11, § 7, All persons who shall commit any offence for which they ought to be adjudged pirates, felons, and robbers, by stat. 11 & 12 Will. III. may be tried and judged for every such offence according to the form of the statute of Hen. VIII. and shall be excluded from their clergy. Not to extend to Scotland, § 8.

Accessaries to piracies made principals, 8 Geo. 1. ch. 24, § 3. Made perpetual by 2 Geo. II. ch. 28, § 7.

Adhering to the king's enemies, &c. 18 Geo. II. ch. 30. For the better prevention of piracies and robberies by crews of private ships of war, &c. 32 Geo. II. ch. 25. A session of the Admiralty court to be held in March and October in every year at the Old Bailey, &c. Ibid. § 20.

For further information on this subject see 3 Inst. ch. 49; 1 Haw. (6th edit.) ch. 37; and 4 Black. Com. 71, 265.

P O I S O N.

P O I S O N.

Indictment against a servant for putting a large quantity of corrosive mercury sublimate into a tea-kettle of water, with an intent to poison her master.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. G.* late of the parish of *St. Martin* in the *Fields*, in the county of *Middlesex*, spinster, being a person of wicked mind and disposition, and maliciously intending to poison one *J. M.* of the parish aforesaid, in the said county of *Middlesex*, apothecary, her master, on the first day of *June*, in the twenty-first * year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, did knowingly, wilfully, and maliciously put a large quantity of corrosive mercury sublimate (being a deadly poison, into a tea-kettle filled with water, (which water he the said *J. M.* had, then and there immediately before, directed the said *A.* to boil, in order to make a certain liquor called *tea*, for his own drinking,) and the said *A.* did then and there knowingly, wilfully, and maliciously boil the said corrosive mercury sublimate in the said water, and the same water, in which the said corrosive mercury sublimate was so boiled as aforesaid, did immediately afterwards, to wit, on the same day and year aforesaid, there deliver to the said *J. M.* her said master, to use, for the making of the said liquor called *tea*; and the said *J. M.* not knowing the said corrosive mercury sublimate to have been in the said water, did use the same in making the said liquor called *tea*, and did drink a quantity of the same, made with the said water, wherein the said corrosive mercury sublimate was so boiled as aforesaid, whereby the said *J. M.* became and was grievously and violently distempered and injured in his body, and in extreme danger of losing his life, to the great damage of the said *J. M.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

[* 599]

Indictment for putting white arsenick into brandy, and giving it to a person to drink.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *T. B.* late of the parish of *Staines*, in the county of *Middlesex*, * yeoman, *E. S.* late of the same, yeoman, and *R. S.* late of the same, yeoman, contriving and intending to hurt and damage the body of *A. O.* widow, on the twelfth day of *April*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, wickedly, and knowingly did mix poison, to wit, white arsenick, with brandy, and the same poison mixed with brandy as aforesaid afterwards, to wit, on the same day and year above mentioned, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully and knowingly did give to the said *A.* to drink; and the said *A.* not knowing the said poison to have been mixed with the brandy as aforesaid, she the said *A.* did

[* 600]

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then and there drink and swallow the poison, mixed with the brandy as aforesaid, by which the said *A.* with the poison aforesaid, then and continually afterwards, until the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, was, and yet is, grievously and violently distempered and injured in her body, to the great damage of the said *A.* and against the peace of our said lord the king, his crown and dignity. ^a

Wilful poisoning shall be adjudged murder, 1 Edw. VI. ch. 12, § 13. Vide ante, 460, 461; 2 Haw. 313.

[* 601]

* P O O R.

Indictment for bringing a poor woman into a parish where she had no settlement, and where she instantly died, so that the parishioners were put to expence in burying her.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of St. Andrew, Holborn, in the county of *Middlesex*, yeoman, devising and intending the inhabitants of the parish of St. George the Martyr, in the said county of *Middlesex*, with the maintenance, support, and expences of one *E. C.* spinster, wrongfully and unjustly to charge, and also intending great bodily harm to the said *E. C.* on the second day of *May*, in the twenty-first year of the reign of our sovereign lord George the third, king of *Great-Britain*, &c. from and out of the parish of St. Andrew, Holborn, aforesaid, her the said *E. C.* then being poor, sick, languid, and impotent, and unable to support, help, or maintain herself, and being wholly unfit for removal, with force and arms, unlawfully, wickedly, inhumanly, unjustly, and against the will of the said *E. C.* and also without any legal warrant or authority whatsoever, into the parish of St. G. the M. aforesaid, did carry and convey, and cause to be carried and conveyed, and then and there, to wit, on the same day and year aforesaid, at the parish last aforesaid, left, and caused to be left, her the said *E. C.* being so sick, weak, languid, impotent, and unable to support, help, or maintain herself as aforesaid, to be kept, maintained, and supported by and at the charge and expence* of the inhabitants of the said last-mentioned parish, (she the said *E. C.* at the time she was so left in the said last-mentioned parish as aforesaid, not having any legal settlement in the same;) which said *E. C.* afterwards, and as soon as she was brought by the said *A. B.* into the said last-mentioned parish as aforesaid, did there instantly die, by reason whereof the inhabitants of the said last-mentioned parish were obliged to pay and expend, and did pay and expend, the sum of fifty shillings, of lawful money of *Great-Britain*, in and about the burial of the said *E. C.* to the great damage of the said inhabitants, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^b

[* 602]

^a Indictment for murder by poison, laying the offence under two counts, *Cro. Cir. Aff.* 458.

^b Indictment against two parish-officers for conspiring to persuade a poor couple to marry, in order to charge the man's parish with the maintenance of the woman, *Cro. Cir. Aff.* 182. Vide *Rex v. Watson*, &c. 1 *Wils.* 41.

Indictment for lodging an inmate, who was delivered of a bastard child, which became chargeable to the parish.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *E. D.* late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, widow, on the fourth day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. devising and intending the inhabitants of the liberty above the bars, in the same parish and county, with the maintenance of one *M. R.* and of a certain bastard child, with which the said *M.* was then pregnant, unjustly to charge and burthen, she the said *E.* on the same * day and year, at the parish aforesaid, in the county aforesaid, to wit, in the same liberty, in the dwelling-house of her the said *E.* there situate, unlawfully did receive and lodge as an inmate the said *M. R.* so being pregnant with a bastard child as aforesaid, and also being poor and unable to maintain herself, and not having any legal settlement in the said liberty; and that she the said *E.* her the said *M.* an inmate, in the same dwelling-house, in the liberty aforesaid, in the same parish and county, from the said fourth day of *December*, in the year aforesaid, until the fifteenth day of *February*, in the year aforesaid, unlawfully did continue, during which time, to wit, on the ninth day of *December*, in the year aforesaid, the said *M.* at the liberty aforesaid, in the same parish and county aforesaid, did bring forth a male bastard child, and the inhabitants of the same liberty have, during the time aforesaid, been thereby compelled to expend divers sums of money, amounting in the whole to the sum of four pounds ten shillings, in relief and maintenance of the said *M.* and her bastard child, to the great damage of the inhabitants of the said liberty, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

[* 603]

Indictment for lodging a poor person, who became chargeable to the parish.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *E. C.* late of the parish of *St. George the Martyr*, in the county of *Middlesex*, widow, on the sixth day of *May*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of * *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, in the dwelling-house of her the said *E. C.* there situate, unlawfully did receive and lodge one *S. G.* an inmate, (the said *S. G.* then poor and unable to maintain herself, and then not having any legal settlement in the said parish;) and that she the said *E. C.* her the said *S. G.* an inmate, in the same dwelling-house, in the parish aforesaid, in the county aforesaid, from the first day of *October*, in the year aforesaid, until the first day of *January*, then next following, unlawfully did continue, whereby the said parish was obliged and compelled to expend and lay out divers great sums of money, to wit, the sum of forty shillings, for relief and maintenance of the said *S. G.* to the great damage of the inhabitants of the same parish, and against the peace of our said lord the king, his crown and dignity.

[* 604]

This and the preceding indictment having been published and continued upwards of fifty years, induced the editor to permit them to remain as in the

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the former editions, though Sir William Blackstone ^a considered the statute law relating to inmates as rigid and oppressive; and so it seems has the legislature, ^b the act in that respect having been long since repealed. It therefore seems reasonable to contend, that a similar opinion ought to prevail at common law; for it would be cruel, in the extreme, to refuse an asylum to an indigent person, who, through the inclemency of the weather, might perish, whilst, perhaps, the inhabitants of two parishes are at variance respecting his supplication for refuge and the common necessities of life.

See the *Queen* against *Langley*, 2 *Ld. Raym.* 790. and 3 *Bur. Just.* title *Poor*.

[* 605]

* P R I S O N.

Indictment at common law for assisting a prisoner to escape out of prison, charged with a forfeiture to the king, upon a writ issued out of the Exchequer.

Writ,

[* 606]

Imprisonment.

Surry. **T**HE jurors for our lord the king upon their oath present, That heretofore, to wit, on the twentieth day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c there issued out of the court of *Exchequer* of our lord the king (the said court then and still being at *Westminster*, in the county of *Middlesex*;) a certain writ of our said lord the king, directed to his then sheriff of the county of *Surry*, by which said writ our said lord the king commanded the said sheriff that he should not omit by reason of any liberty, but enter the same, and take *J. R.* by his body, wheresoever he the said sheriff should find him within his bailiwick, and him safely and securely keep, so that he the said sheriff might have his body before the barons of the *Exchequer* of our said lord the king at *Westminster*, on the twenty-ninth day of *November* then following, to answer to our said lord the king, concerning certain articles whereof he was impeached, on a certain information exhibited before the said barons of our said lord the king by his attorney-general, for a forfeiture of two thousand three hundred and thirty-two pounds, for an offence in the information aforesaid mentioned, and further to do and receive in the premises what the said court then and there should see fit to order, and that the said sheriff * should have then and there that writ; and the said writ afterwards, and before the return thereof, to wit, on the twenty-fourth day of the same month of *November*, in the year aforesaid, at the parish of *St. George, Southwark*, in the said county of *Surry*, was delivered to *A. B.* esquire, then sheriff of the county of *Surry* aforesaid, in due form of law to be executed, by virtue of which said writ, he the aforesaid *J. R.* was then and there taken and imprisoned by him the sheriff in the gaol of our said lord the king, commonly called the *New Gaol*, in *Southwark*, situate in the parish of *St. George, Southwark*, aforesaid, in the said county of *Surry*, to answer to our said lord the king of and concerning the premises in the said writ above specified. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. R.* being so in the said gaol in custody as aforesaid, for the cause aforesaid, one *R. W.* late of the parish of *St. George, Southwark*, aforesaid, in the said county of

^a 4 *Com.* 168.

^b *Vide ante*, 277, 406.

Surry,

Surry, blacksmith, well knowing the premises, but being a person of an evil mind and wicked disposition, and contriving and intending to procure the escape of him the said *J. R.* out of the said gaol, afterwards, to wit, on the sixth day of *December*, in the said twenty-first year of the reign of our said lord the king, at the parish aforesaid, in the said county of *S.* with force and arms, unlawfully, knowingly, and advisedly did bring, and cause to be brought and delivered, to the said *J. R.* (then and there being in gaol aforesaid, in the custody of the said *A. B.* esquire, then sheriff of the said county of *Surry*, for the cause in the writ above specified,) one rope and two iron hooks, to the intent and purpose that the said *J. R.* might and should thereby be enabled to make his escape out of the said gaol. And the jurors aforesaid, upon their oath aforesaid, do further present, That * pursuant to the contrivance and intention of the said *R. W.* and by means of the said rope and hooks, and by procurement of the said *R. W.* he the said *J. R.* afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in the county of *S.* then and there being in the custody of the said sheriff, in the said gaol, for the cause in the writ above specified, with force and arms, against the will, and without the licence or consent, of the said sheriff, and of the then gaoler of the said gaol, unlawfully and voluntarily did escape and go at large out of the said gaol from the custody of the said *A. B.* then sheriff of the said county of *S.* And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *R. W.* on the sixth day of *December*, in the twenty-first year aforesaid, with force and arms, at the parish aforesaid, in the said county of *S.* wilfully, advisedly, and against the will, and without the licence or consent, of the said then sheriff of the said county of *S.* and also against the will, and without the licence or consent, of the then gaoler of the said gaol of our said lord the king of his said county of *S.* did aid, abet, comfort, and assist the said *J. R.* so being in the said gaol as aforesaid, for the cause aforesaid, in making his escape from the said gaol and custody of the said sheriff, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.^a

[* 607]

Escape.

1. *The offence of breaking a gaol or prison by the common law was no less than felony; and this whether the party was committed in a criminal or civil * case, or whether he were actually within the walls of a prison, or only in the stocks, or in the custody of any person who had lawfully arrested him, or whether he were in the king's prison, or one belonging to a lord of franchise.* 2 *Bac. Abr.* 635, and the authorities there cited.

[* 608]

2. *But the severity of the law in this particular is relaxed by the statute de frangentibus prisonam (1 Edw. II. stat. 2.), which enacts, "That none from henceforth that breaketh prison shall have judgment of life or member for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convicted thereupon according to the law and custom of the realm."*

In what cases it is felony to break prison.

^a An Indictment on 16 *Geo. II. ch. 31*, for conveying files into a prison in order to facilitate the escape of a prisoner, *Cro. Cir. Aff.* 505. For other precedents on this subject referred to, *vide* 321, 322, *ante*.

PRECEDENTS of INDICTMENTS.

How an indictment must charge the offence.

3. It is certain, that every indictment, to bring the offender within the intention of the statute, must specially set forth his case in such a manner that it may appear he was lawfully in prison, and for such a crime as requires judgment of life or member; for it is not sufficient to say in general, that he feloniously broke the prison: and it seems that the same rules which are required for an indictment of an escape are generally to be observed in framing indictments for breaking prison. 2 Haw. 128, § 19.

As to an aider, &c. where the offence is only a misdemeanor at common law.

4. As those who break prison are punishable, as for a high misprison, by fine and imprisonment, in those cases wherein they are saved from judgment of death by the above statute, so also are those who rescue such prisoner, in the like cases, in the same manner punishable. 2 Haw. 140; 4 Bac. Abr. 398. Vide also Haw. 128, § 20.

Where a person assisting a prisoner to escape shall be deemed guilty of felony.

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and where of a misdemeanor.

By stat. 16 Geo. II. ch. 31, § 1, If any person shall by any means whatsoever be aiding or assisting to any prisoner to attempt to make his escape from any gaol, although no escape be actually made, in case such prisoner then was attainted or convicted of treason, or any felony, except petty larceny, or lawfully * committed to or detained in any gaol for treason, or any felony, except petty larceny, expressed in the warrant of commitment or detainer, every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged guilty of felony, and shall be transported for seven years; and in case such prisoner was convicted of, committed to, or detained in any gaol for petty larceny, or any other crime, not being treason or felony, expressed in the warrant of commitment or detainer as aforesaid, or then was in gaol upon any process whatever for any debt, &c. amounting to one hundred pounds, every person so offending, and being thereof lawfully convicted, shall be deemed guilty of a misdemeanor, for which he shall be liable to be fined and imprisoned.

Conveying of any disguise, instrument, or arms to help, &c.

[* 610]

§ 2. If any person shall convey, or cause to be conveyed, into any gaol or prison, any vizor or other disguise, or any^a instrument, or arms, proper to facilitate the escape of prisoners, and the same shall deliver, or cause to be delivered, to any prisoner in any such gaol, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper or under-keeper of any such gaol or prison, every such person, although no escape, or attempt to escape, be actually made, shall be deemed to have delivered such vizor, &c. with an intent to aid and assist such prisoner to escape, or attempt to escape; and in case such prisoner then was attainted or convicted of treason, or any felony, except petty larceny, or lawfully committed to or detained in any gaol for treason, or any felony, except petty larceny, expressed in the warrant of commitment or detainer, every person so offending, and being thereof lawfully convicted, shall * in like manner be adjudged guilty of felony, and be transported for seven years; but in case the prisoner, to whom or for whose use such vizor, &c. shall be so delivered, then was convicted, committed, or detained for petty larceny, or any other crime, not being treason or felony, expressed in the warrant of commitment or detainer, or upon any process for any debt, &c. amounting to one hundred pounds, every such person so offending,

^a The indictment must state that the instruments were conveyed with a design to effectuate the escape.—No indictment can be maintained upon this act for contributing to the escape of a prisoner committed on suspicion only. 2 Haw. (6th edit.) 211,

and

and being thereof lawfully convicted, shall be adjudged guilty of a misdemeanor, for which he shall be liable to a fine and imprisonment.

§ 3. If any person shall aid or assist any prisoner to attempt to make his escape from any constable, headborough, tythingman, or other officer or person who shall then have the lawful charge of such prisoner, in order to carry him to gaol by virtue of a warrant of commitment for treason or any felony, (except petty larceny,) expressed in such warrant; or if any person shall be aiding or assisting to any felon to attempt to make his escape from on board any boat, ship, or vessel carrying felons for transportation, or from the contractor for the transportation of such felons, his assigns, or agents, or any other person to whom such felon shall have been lawfully delivered, in order for transportation; then every person so offending, and being lawfully convicted thereof, shall be adjudged guilty of felony, and shall be transported for seven years.

§ 4. Prosecution to be commenced within one year.

§ 5. Persons ordered for transportation, and returning, &c. felony.^a

Assisting persons to escape from constables, &c. or from any boat, &c. carrying felons for transportation. *Vide* Transportation, *post*.

Indictment for ravishing a woman.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. George, Hanover-square*, in the county of *Middlesex*, gentleman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the fourth day of *September*, in the twenty-first year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. with force and arms, at the parish of *St. Martin in the Fields*, in the county of *Middlesex* aforesaid, in and upon one *A. P.* spinster, in the peace of God and our said lord the king then and there being, violently and feloniously did make an assault, and her the said *A. P.* against the will of her the said *A. P.* then and there feloniously did ravish and carnally know, against the form of the ^b *statute* in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

Indictment for carnally knowing and abusing a female child under the age of ten years.

Gloucestershire. **T**HE jurors for our lord the king upon their oath present, That *G. D.* late of the parish of *Stroud*, in the county of *Gloucester*, labourer, not having the fear of God before his eyes, but being moved * and seduced by the instigation of the devil, on the thirteenth day of *May*, in the twenty-ninth year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. with force and arms, at the parish

^a For further information on this subject *vide* *Escape*, *ante*, 322, 323; *Rescue*, *post*; 2 *Harw* ch. 18—21; 2 *Inst.* 589; *Index* of 2 *H. H.* title *Breach of Prison*; 2 *Bac. Abr.* 635; 4 *Bac. Abr.* 397; and 4 *Burr.* *Just.* (15th edit.) 43.

^b It is necessary to conclude thus. 2 *H. H.* 189.

aforesaid,

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aforesaid, in the county aforesaid, in and upon one *E. P.* spinster, an infant under the age of ten years, to wit, of the age of nine years and upwards, in the peace of God and our said lord the king then and there being, feloniously did make an assault, and her the said *E.* then and there wickedly, unlawfully, and feloniously did carnally know and abuse, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. ^a

Rape was a felony at ^b common law; but by stat. 3 Edw. I. ch. 13, made only a misdemeanor; afterwards, by stat. 13 Edw. I. ch. 34, made felony again; and by stat. 18 Eliz. ch. 7, § 1, clergy is taken away upon conviction, verdict, confession, or outlawry.

By the fourth section of the latter statute it is enacted, *That if any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, every such unlawful and carnal knowledge shall be felony, and the offender, thereof being duly convicted, shall suffer as a felon, without allowance of clergy.*

[* 613]

1. So that if the party ravished be under the age of ten, you must set forth her age, and say in the indictment (instead of the words against her will, did feloniously ravish, and carnally know), did * unlawfully and feloniously carnally know and abuse, because it is felony within the meaning of the statute, whether she consented or not, being under the age of ten years. Vide 1 Haw. 108, § 5.

2. If a woman, being above ten years, does not consent at the time of committing the fact, it is a rape, though she should consent afterwards. Ibid. § 2.

3. It is no mitigation to shew that she yielded to the violence, if her consent was forced by fear of death or duress; nor is it any excuse that she was a common strumpet, for she is still under the protection of the law, and may be forced. Ibid.

4. It is a great presumption of a woman's consent, if she made no complaint in a reasonable time after the fact. Ibid. § 3.

5. There must be some degree of penetration, and also of emission, to amount to a rape; but it is said that emission is, prima facie, an evidence of penetration. Ibid. § 1.

6. It has been said by some to be no rape to force a woman who conceives at the time, upon the principle, that if she had not consented she could not have conceived; but (per Hawkins) this opinion seems very questionable, not only because the previous violence is no way extenuated by a subsequent consent, but also because, if it were necessary to shew that the woman did not conceive, the offender could not be tried till such time as it might appear whether she did or not. Ibid. § 2.

7. All who are present, and actually assisting to commit a rape, may be indicted as principal offenders, whether they be men or women. Ibid. § 6.^c

^a The prisoner was tried on this indictment at Gloucester summer assizes, 1789, convicted, and executed.

Quere, if death ensues from the violence of this offence, whether the aggressor can be indicted for murder? *Lad's case*, Le Cro. Ca. 98. Vide also *Porwell's case*, *ibid.* 114, as to the evidence of an infant prosecutrix.

^b 2 Inst. 180.

^c Vide 2 Inst. 180, and 3 Inst. 60, for further information on this subject.

RESCUE.

Indictment against two for a rescue, one of them being in custody of an officer of the marshal's court upon process, &c.

Surry. **T**HE jurors for our lord the king upon their oath present, That on the nineteenth day of *January*, in the seventh year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. our said lord the king, by his writ issued out of the court of our said lord the king of his palace of *Westminster*, under the seal of the said court, bearing date the same day and year aforesaid, directed to the bearers of the verges of the household of our said lord the king, officers and ministers of the court of our said lord the king of his palace of *Westminster*, and every of them, did command them, and every of them, that they should take, or one of them should take, by their bodies, *R. A.* and *W. C.* if they should be found within the jurisdiction of the court aforesaid, and them safely keep, so that they might have, or one of them might have, their bodies before the judges of the court aforesaid, at the then next court of the palace of our said lord the king of *Westminster* aforesaid, on *Friday* the twenty-sixth day of *January* then next following, to be holden at *Southwark*, in the county of *Surry*, to answer to *T. W.* of a plea of trespass upon the case, to the damage of ninety-nine shillings; which same writ afterwards, and before the return of the same, to wit, on the twenty-fifth day of *January*, in the year aforesaid, at the parish of *St. George, Southwark*, in the said county of *Surry*, and * within the jurisdiction of that court, was delivered to one *G. N.* then one of the bearers of the verges of our said lord the king, officers and ministers of the said court of our said lord the king, to be executed in due form of law; by virtue of which said writ, the said *G. N.* afterwards, and before the return thereof, to wit, on the same twenty-fifth day of *January*, in the year aforesaid, at the parish aforesaid, in the county of *S.* aforesaid, and within the jurisdiction of that court, did take and arrest the body of the said *R. A.* in the writ aforesaid named, and him the said *R. A.* in his custody, by virtue of the said writ, then and there had; and that the said *R. A.* late of the parish aforesaid, in the county aforesaid, yeoman, and *C. D.* late of the same, blacksmith, afterwards, to wit, on the said twenty-fifth day of *January*, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *G. N.* then and there as aforesaid being one of the bearers of the verges of the household of our said lord the king, officers and ministers of the court aforesaid, and in the peace of God and our said lord the king, and in the due execution of his said office, then and there also being, did make an assault, and him the said *G. N.* then and there did beat, wound, and ill-treat, so that his life was greatly despaired of; and that the said *C. D.* him the said *R. A.* out of the custody of the said *G. N.* and against the will of the said *G. N.* then and there, with force and arms, unlawfully did rescue and put at large to go whithersoever he would; and that the said *R. A.* himself out of the custody of the said *G. N.* and against the will of the said *G. N.* then and there, with force and arms, unlawfully did rescue and escape at large whithersoever he

[* 615]

Arrest.

Rescue.

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[* 616] he had a mind to go, to the great hindrance and obstruction of justice, in contempt of our said * lord the king and his laws, to the great damage of the said G. N. to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. [Here add a count for a common assault, for which vide ante, 148.]

Indictment against several for rescuing a person taken upon a bill of Middlesex.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That on the twelfth day of *February*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. a certain ^a *precept*, commonly called a bill of *Middlesex*, was issued out of the court of our said lord the king, before the king himself, (the same court then and still being at *Westminster*, in the said county of *Middlesex*,) by which it was commanded to the sheriff of *Middlesex* that he should take *H. O.* and *J. D.* if, ^b *and so forth*, and them safely, *and so forth*, so that he might have their bodies before our said lord the king at *Westminster*, on *Wednesday* next after fifteen days of *Easter*, to answer to *B. H.* of a plea of trespass, and also to the bill of him the said *B. H.* to be exhibited against the aforesaid *H. O.* for thirty pounds, upon promises, according to the custom of the said court; which same precept afterwards, and before the return thereof, to wit, on the twentieth day of *February*, in the year aforesaid, at the parish of *St. Andrew, Holborn*, in the county of *Middlesex* aforesaid, was delivered to * *A. B.* esquire, and *C. D.* esquire, sheriff of the county aforesaid, to be executed in due form of law; which said *A. B.* and *C. D.* esquire, sheriff of the county aforesaid, by virtue of the precept aforesaid, afterwards, and before the return thereof, to wit, on the said twentieth day of *February*, in the year aforesaid, at *W.* aforesaid, did make a certain warrant of him the said sheriff, under his seal, directed to *J. D. P. C.* and *R. R.* his bailiffs of the hundred of *Offulston*, in the county aforesaid, by which he commanded them, and every of them, jointly and severally, that they should take, or one of them should take, the said *O. H.* in the precept above named, to answer to the said *B. H.* of the plea of trespass aforesaid, and that the said *J. D.* in the warrant aforesaid named, afterwards, and before the return of the precept aforesaid, to wit, on the twenty-eighth day of *February*, in the year aforesaid, by virtue of the precept and warrant aforesaid, at the parish of *Fulham*, within the hundred aforesaid, in the county aforesaid, did take and arrest the said *H. O.* in the precept aforesaid above mentioned, according to the command of the precept and warrant aforesaid, upon which the said *H. O.* late of the said parish of *Fulham*, in the county aforesaid, yeoman, *J. F.* late of the same, spinster, afterwards, to wit, on the said twenty-eighth day of *February*, in the year aforesaid, with force and arms, at the parish of *Fulham* aforesaid, in the county aforesaid, in and upon the said *J. D.* then being one of the bailiffs of the said sheriff of the county aforesaid of the hundred of *Offulston* aforesaid, and in the due execution of the precept and warrant aforesaid, and in the peace of God and our said

^a If a *latitat*, say, writ. The bill of *Middlesex* is only a *precept*, having no *teste*. Vide 1 *Crom. Prac.* (3d edit.) 9.

^b As the process may be.

R E S C U E.

lord the king then and there also being, did make an assault, and him the said *J. D.* then and there did beat, wound, and ill-treat, so that his life was * greatly despaired of; and that the said *J. F.* [* 618] and *M. W.* him the said *H. O.* out of the custody, and against the will, of the said *J. D.* then and there unlawfully did rescue and Rescue. put at large to go whithersoever he would; and that the said *H. O.* himself out of the custody, and against the will, of the said *J. D.* then and there unlawfully did rescue and escape at large whithersoever he had a mind to go, to the great hindrance and obstruction of justice, in contempt of our said lord the king and his laws, to the great damage of the said *J. D.* and against the peace of our said lord the king, his crown and dignity. [*Lay another count for a common assault.* Vide ante, 148.]

Indictment for rescuing goods distrained for rent.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That on the second day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. one *M. P.* of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, pastry-cook, in due form of law, did take and distrain one walnut-tree chest of drawers, of the value of twenty shillings, and one feather-bed, of the value of forty-three shillings, of the goods and chattels of one *H. A.* widow, then being in a certain lodging-room in the dwelling-house of the said *M. P.* situate in the parish and county aforesaid, which same distress was taken by him the said *M. P.* for the sum of three pounds and ten shillings, being then due for rent, for one whole year, in arrear from the said *A. H.* to him the said *M. P.* for the lodging aforesaid; and that the said *M. P.** the said goods and chattels then and there had and detained in his custody for the cause aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That *A. W.* late of the said parish of *St. Andrew, Holborn*, in the said county of *Middlesex*, yeoman, afterwards, to wit, on the said second day of *December*, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, the said goods and chattels, so as aforesaid by the said *M. P.* taken and distrained, and in the custody of him the said *M. P.* then being, from and out of the custody, and against the will, of him the said *M. P.* then and there unlawfully and injuriously did rescue, take, and carry away, (the said sum of three pounds and ten shillings, for the said rent in arrear, as aforesaid due, nor any part thereof, being then paid,) and other wrongs to the said *M. P.* then and there did, to the great damage of the said *M. P.* and against the peace of our said lord the king, his crown and dignity.* [* 619]

1. *Rescue is the taking away and setting at liberty against law a distress taken for rent, services, or damage-feasant; but the more*

a This is necessary. 2 *Lil. Reg.* 469; 2 *Keb.* 471.

a *Vide prec. ante*, 145.

Indictment for rescuing two prisoners who had been convicted of a misdemeanor in the court of *Great Session* in *Denbighshire*, and sentenced to be imprisoned, and assaulting the gaoler, *Cro. Cir. Ass.* 293.

for rescuing cattle out of a pound, which had been distrained for doing damage in the prosecutor's close, *ib.* 299

for rescuing a rioter out of the hands of a justice of the peace, the original offence being on his own view, *ibid.* 300.

general

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general notion of this offence is, the forcibly freeing another from an arrest or some legal commitment, which, being a high offence, subjects the offender not only to an action at the suit of the party injured, but also to fine and imprisonment at the suit of the king. 4 Bac. Abr. 396, and the authorities there cited.

[* 620]

* 2. If a man distrain cattle, and as he is driving them to the pound they go into the owner's house, and he refuse to deliver them, this is a rescue in law. 4 Bac. Abr. 396.

3. But here it must be observed, that there can be no rescue but where the party has had the actual possession of the object whereof a rescue is supposed to have been made; for if a man come to arrest another, or distrain, &c. and is disturbed, regularly his remedy is by action on the case. Ibid. Vide also Cro. Jac. 486.

4. The sheriff cannot return a rescue of a person arrested, made upon a special bailiff not known, it ought to be on a sheriff's known bailiff; and if the writ upon which the defendant is arrested be naught, and a rescue is made, there is no remedy against the rescuers. 2 Lill. Reg. 468.

5. The plaintiff, at whose suit an arrest is made upon mesne process, must bring his action against the rescuers, and cannot proceed against the sheriff; but it is otherwise if the party rescued had been taken in execution upon a ca. sa. &c. Cro. Jac. 419, 486.

6 In an action of escape on mesne process, if the sheriff plead a rescue, it shall be good; but not upon an execution, where he may raise the posse comitatus to secure the prisoner or goods. Ibid. 419.

[* 621]

7. If the lord distrain for rent when none is due, the tenant may lawfully make rescue; so may a stranger, if his beasts be distrained when no rent is due; so if the tenant^a tender the rent when the lord comes to distrain, and yet he does distrain; or if he distrain any thing not distrainable, as beasts of the^b plough, when other sufficient distress may be taken, * the tenant may make rescue; so may he if the lord distrain on the highway, or out of his fee. 4 Bac. Abr. 397, and the authorities there cited.

8. But though there must be a reason for the distress, and that otherwise the rescue cannot be lawful, yet it hath been held in a parco tracto, that the defendant cannot justify breaking the pound and taking out the cattle, though the distress was irregular, because they are then in the custody of the law. Ibid.

9. The unlawful rescuers of goods distrained, and pound-breakers, incur treble damages, recoverable by the statute on action of the case: but where a distress is taken, and no rent due, double value of the goods may be recovered by the owner, &c. 2 Will. & M. sess. 1. ch. 5. § 4 & 5.

^a A tender in replevin after impounding and before action brought is not good. 5 Bac. Abr. 32.

^b But by statute they may be distrained for the poor's rate. Harg. & Butler's Co. Lit. 47. (b.)—There are several other descriptions of property which cannot be distrained for rent; such as utensils of trade, the books of a scholar, materials in a weaver or taylor's shop, corn or meal in a mill or market, an horse tied to a miller's door, &c. 2 Bac. Abr. 108. But an horse upon which a man is riding may be distrained damage-feasant, and led to the pound with the rider on him. Ibid. Vide H. & B. Co. Lit. 47, 2 (12); Com. Dig. tit. Distress, (B. 4.) For ample information on the law of distress, see H. & B. Co. Lit. 47, 160, 161; the several Abridgments, titles Distress and Replevin; 3 Black. Com. 6, 145; and Gilbert's Law of Replevin.

10. There

10. *There is a difference between a man being arrested by a warrant on record, and by a general authority in law; for if a capias be awarded to the sheriff to arrest a man for felony, though he be innocent, he cannot make rescue; but if a sheriff will, by the general authority committed to him by law, arrest a man for felony, if he be innocent, he may rescue himself.* 4 Bac. Abr. 397.

11. *The court cannot judge of a proper punishment on a general charge; therefore in an indictment for a rescue it must appear for what the party was committed to the house of correction, &c.* Rex v. Freeman, 2 Stra. 1226.

12. *But if a warrant of commitment plainly and expressly charge the party with an offence, though it * be not strictly formal in other respects, yet it seems, that a gaoler suffering an escape is as much punishable as if the warrant were perfectly right.* 2 Haw.

134, § 24.

Vide Escape and Prison, ante. The law under those heads being so nearly connected with the present, renders it necessary to read them collectively, in order to obtain further information; and which will be fully discovered by the indexes of *Hawkins, Hale, Bac. Abr. and Com. Dig.*

[* 622]

R I O T.

Indictment for a riot and assault.

Surry. **T**HE jurors for our lord the king upon their oath present, That *F. C.* late of the parish of *Croydon*, in the county of *Surry*, yeoman, *T. H.* late of the same, yeoman, and *A. H.* late of the same, yeoman, ^a together with divers other evil-disposed persons to the number of ten and more (to the jurors aforesaid as yet unknown), on the fifteenth day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, did unlawfully, riotously, and routously assemble and gather together, to disturb the peace of our said lord the king; and so being then and there assembled and gathered together, in and upon one *S.* the wife of *W. H.* in the peace of God and our said lord the king then and there being, unlawfully, riotously, and routously did make an assault, and her the said *S.* then and there unlawfully, riotously, and riotously did beat, wound, and ill-treat, so that * her life was greatly despaired of and other wrongs to the said *S.* then and there unlawfully, riotously, and routously did, to the great damage of the said *S.* and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. [*Here add a count for a common assault, as in page 148.*]

[* 623]

Indictment for a riot, assault, and false imprisonment.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. B.* late of the parish of *St. George, Hanover-square*, in the county of *Middlesex*, stone-mason, *J. O.* late of the same, stone-mason, *P. M.* late of the same, stone-mason, *A. L.* ^a late of the same, labourer, and *S. A.* late of the same, First count, for a riot, assault, and imprisonment, stating money to have been paid for, &c.

^a *Vide doctrine under this head, § 1, post.*

^b *Vide doctrine under this head, § 1, post.*

same,

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[* 624]

Second count,
for disturbance,
&c. omitting
the riot and
payment of
money.

same, labourer, being wicked, malicious, and evil-disposed persons, of unruly minds, and turbulent tempers and dispositions, on the fifth day of *September*, in the eighteenth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, riotously, routously, and injuriously did assemble and gather together, to disturb the peace of our said lord the king, and so being then and there assembled and gathered together, a very great riot, rout, tumult, and disturbance then and there did make, and cause to be made, in and upon one *J. T.* in the peace of God and our said lord the king then and there being, unlawfully, riotously, routously, and injuriously did make a violent assault, and him the said *J. T.* then and there did violently, riotously, and routously beat, bruise, wound, and ill-treat, so that his life was greatly despaired of; and him the said *J. T.* then and there, * with force and arms, unlawfully, riotously, routously, and injuriously, against the will of the said *J. T.* and contrary to the laws of this realm, without any legal warrant, authority, or justifiable or probable cause whatsoever, did imprison and detain in prison there for a long space of time, to wit, for the space of two hours then next following, and until he the said *J. T.* had given unto them the said *J. B. J. O. P. M. A. L.* and *S. A.* the sum of three shillings for his delivery and enlargement from the said imprisonment, and other wrongs to the said *J. T.* they the said *J. B. J. O. P. M. A. L.* and *S. A.* then and there unlawfully, violently, maliciously, riotously, routously, and injuriously did, to the great damage of the said *J. T.* in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. ^a And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *J. B. J. O. P. M. A. L.* and *S. A.* afterwards, to wit, on the same day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously did assemble and gather together, to disturb the peace of our said lord the king; and so being then and there assembled and gathered together, as last aforesaid, a very great noise and disturbance then and there did make, and cause to be made, and in and upon the said *J. T.* in the peace of God and our said lord the king then and there being, unlawfully and injuriously did make a violent assault, and him the said *J. T.* then and there did violently beat, bruise, wound, and ill treat, so that his life was greatly despaired of; and him the said *J. T.* then * and there, with force and arms, unlawfully and injuriously, against the will of him the said *J. T.* and contrary to the laws of this realm, without any legal warrant, authority, or justifiable or probable cause whatsoever, did imprison and detain in prison there for a long space of time, to wit, for the space of two hours then next following, and other wrongs to the said *J. T.* they the said *J. B. J. O. P. M. A. L.* and *S. A.* then and there unlawfully, violently, maliciously, and injuriously did, to the great damage of the said *J. T.* in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the

[* 625]

^a The grand jury may return a true bill upon one count for the assault, and indorse *ignoramus* as to the count for the riot. *Reg. v. Fieldhouse, Corrup.* 325.

jurors,

jurors, &c. [*Here add a count for a common assault, as in page 148.*]

Indiſſment for a riot committed by ſeveral footmen at Drury-lane play-houſe, and breaking the lamps thereof.

Middleſex. **T**HE jurors for our lord the king upon their oath preſent, That *J. S.* late of the pariſh of *St. Martin* in the *Fields*, in the county of *Middleſex*, labourer, *J. R.* late of the ſame, labourer, and *D. W.* late of the ſame, labourer, together with fifty other evil-diſpoſed perſons and more (to the jurors aforeſaid as yet unknown), being rioters, routers, and diſturbers of the peace of our ſaid lord the king, on the fifth day of *March*, in the twenty-fiſt year of the reign of our ſovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the pariſh aforeſaid, in the county aforeſaid, unlawfully, riotouſly, and routouſly did aſſemble and gather together, to diſturb the peace of our ſaid lord the king, and being ſo aſſembled and * gathered together, ten lamps and two doors, belonging to *C. F.* eſquire, then and there being in a certain building of him the ſaid *C. F.* called *Drury-lane* play-houſe, then and there unlawfully, riotouſly, and routouſly did break and deſtroy, (his royal highneſs the Prince of *Wales* then and there being in the ſaid play-houſe,) and other wrongs to the ſaid *C. F.* in contempt of our ſaid lord the king and his laws, to the great damage of the ſaid *C. F.* to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity. And the jurors aforeſaid, upon their oath aforeſaid, do further preſent, That the ſaid *J. S.* *J. R.* and *D. W.* together with fifty other evil-diſpoſed perſons and more (to the jurors aforeſaid as yet unknown), being rioters, routers, and diſturbers of the peace of our ſaid lord the king, on the ſaid fifth day of *March*, in the year aforeſaid, with force and arms, to wit, with ſticks, ſtaves, and other offensive weapons, at the pariſh aforeſaid, in the county aforeſaid, unlawfully, riotouſly, and routouſly did aſſemble and gather together, to diſturb the peace of our ſaid lord the king, and being ſo aſſembled and gathered together, armed as laſt aforeſaid, did then and there unlawfully, riotouſly, and routouſly make a great noiſe, riot, and diſturbance, and did then and there remain and continue, armed as laſt aforeſaid, making ſuch noiſe, riot, and diſturbance, for the ſpace of half an hour and more then next following, to the great diſturbance and terror not only of the liege ſubjects of our ſaid lord the king there being and reſiding, but of all other the liege ſubjects of our ſaid lord the king then paſſing and repaſſing in and along the king's common highway there, in contempt of our ſaid lord the king and his laws, to the dangerous * and evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity. *

First count, for a riot and breaking lamps.

[* 626]

Second count, for a general aſſembly with arms, and making a riot.

[* 527]

a Information for a riot in *Covent-garden* play-houſe, and preventing Mr. *Macklin* from performing, &c. *Cro. Cir. Aff.* 244.

Indictment for a riot, and endeavouring to rescue two persons apprehended for attempting to cut down a turnpike-gate.

Herefordshire. **T**HE jurors for our lord the king upon their oath present, That *E. C.* late of *Ledbury*, in the county of *Hereford*, spinster, *J. B.* late of the same, labourer, ^a together with divers other evil disposed persons, to the number of twenty and more (to the jurors aforesaid as yet unknown), on the fourth day of *September*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at *Ledbury* aforesaid, in the county aforesaid, did unlawfully, riotously, and routously assemble and gather together, to disturb the peace of our said lord the king, and being then and there so assembled and gathered together, were armed with axes, hatchets, and other instruments, with an intent to cut down and destroy, and then and there did attempt to cut down and destroy, a certain turnpike-gate, then and there lately before, to wit, on the second day of *September*, in the year of our Lord one thousand seven hundred and eighty, erected by authority of a certain act of parliament in that case made and provided, intituled, *An act for repairing the several * roads leading from the town of Ledbury, in the county of Hereford, to the several places therein mentioned*; and that the said *J. B.* and *T. R.* afterwards, to wit, on the same day and year first above mentioned, at *Ledbury* aforesaid, in the county aforesaid, were lawfully taken and apprehended for the offences aforesaid, and then and there were conveyed before *J. S.* esquire, then one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of *Hereford* aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, to be examined touching the premises, and further to be dealt with according to law, and were duly kept and detained in custody at the dwelling-house of the said *J. S.* situate in *Ledbury* aforesaid, for that purpose; and that the said *J. B.* and *T. R.* so being in custody for the offences aforesaid, the said *E. W.* afterwards, to wit, on the same day and year first above mentioned, at *L.* aforesaid, in the year aforesaid, together with the said other persons (to the jurors aforesaid as yet unknown), the dwelling-house of the said *J. S.* there situate, unlawfully, riotously, and routously did attack and beset; and that the said *E. W.* did then and there advise, persuade, and encourage the said other persons (to the jurors aforesaid as yet unknown) to discharge and shoot off several guns to and against the said dwelling-house of the said *J. S.* and by such advice, persuasion, and encouragement of the said *E. W.* the said other persons (to the jurors aforesaid as yet unknown) then and there did discharge and shoot off several guns against the said dwelling-house of the said *J. S.* with an intent forcibly to rescue the said *J. B.* and *T. R.* so as aforesaid being in custody for the causes above mentioned, in contempt of our said lord the * king and his laws, to the great damage of the said *J. S.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Vide Turnpike, post.

^a *Vide next bottom note.*

1. *A riot*

[* 628]

[* 629]

1. A riot seems to be a tumultuous disturbance of the peace, by three persons, or more, assembling together of their own authority, with an intent mutually to assist each other against any who shall oppose them in the execution of some enterprize of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful. 1 Haw. 155, § 1.

2. It seems agreed, that if a number of persons, being met together at a fair, or market, or church-ale, or on any other lawful and innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who actually engage in it, because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it: yet it is said, that if persons, innocently assembled together, do afterwards, upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot; * because, upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose, from the time of such confederacy, as if their first coming together had been on such a design. 1 Haw. 156, § 3.

3. Women, it is said, may be punished as rioters; but infants under the age of fourteen are not. Ibid 159, § 14.

4. At common law riots are punished by fine and imprisonment, and by pillory, if enormous Ibid. § 12.

5. By statute, justices of the peace, with the sheriffs of counties, &c. have power to suppress riots, and arrest and imprison, &c. They are to make inquiry by a jury, and record and certify their proceedings, &c.

Vide stat. 34 Edw. III. ch. 1; 17 Rich. II. ch. 8; 13 Hen. IV. ch. 7; 2 Hen. V. ch. 8; and 19 Hen. VII. ch. 13.

The law on these statutes expounded. 1 Haw. ch. 65. b

Indictment (on statute) for a riot, by above the number of twelve persons remaining an hour after proclamation read.

Middlesex. THE jurors for our lord the king upon their oath present, That A. B. late of the parish of St. Giles in the county of Middlesex, labourer, E. D. late of the same, baker, F. C. late of the same, blacksmith, * H. J. late of the same, weaver, and divers other persons, to the number of ^c twelve

a Six were indicted for a riot, two of whom died before trial; two others were acquitted, and the rest found guilty; yet judgment was given upon this verdict, for, by Lord Mansfield, they must have been found guilty with those who had not been tried, as it could not otherwise have been a riot. Rex v. Scott and Hams, 3 Burr. 1262. So where the indictment is "that the defendants, together with many others," committed a riot, two only may be found guilty, and judgment shall be given against them. Ibid. 1264; 1 Stra. 196. One conspirator may be convicted after the other is dead. 2 Stra 1227.

b Indictment for inciting persons to make a riot in opposition to the passing of one of the militia-acts, who accordingly assembled, Cro. Cir. Aff. 256.

Information by the king's attorney-general against several prisoners for a riot and conspiracy in the King's Bench prison, and attempting to blow up the wall thereof with gun-powder, in August, 1785, ibid. 259.

c See the doctrine in page 634.

[* 630]

[* 631]

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and more (to the jurors aforesaid as yet unknown), after the last day of *July*, in the year of our Lord one thousand seven hundred and fifteen, to wit, on the sixteenth day of *March*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, riotously, tumultuously, and feloniously did assemble and meet together, to the disturbance of the public peace; and that afterwards, to wit, on the said sixteenth day of *March*, in the said twenty-second year of the reign of our said lord the king, at the parish aforesaid, in the county aforesaid, *T. D.* esquire, then being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of *Middlesex* aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, did then and there come as near as he safely could to the said *A B. E D. F G. H J.* and the said divers other persons, to the number of twelve and more (to the jurors aforesaid as yet unknown), being then and there so assembled, to the disturbance of the public peace as aforesaid, and with a loud voice he the said *T. D.* did then and there command, and cause to be commanded, silence to be, while proclamation was making; and the said *T. D.* after that, did then and there openly, and with a loud voice, make proclamation (according to the form of the statute in such case made and provided) in these words following, that is to say, *Our sovereign lord the king chargeth and commandeth all persons, being assembled, immediately to disperse * themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act, made in the first year of king George, for preventing tumults and riotous assemblies. God save the king.* And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *A B. E D. F G. H J.* and the said divers other persons, to the number of twelve and more (to the jurors aforesaid as yet unknown), afterwards, to wit, on the said sixteenth day of *March*, in the said twenty-second year of the reign of our said lord the now king, with force and arms, at the parish of *St. Giles* in the *Fields* aforesaid, in the county aforesaid (notwithstanding the said proclamation was so openly made as aforesaid), did then and there unlawfully, feloniously, riotously, and tumultuously, to the disturbance of the public peace, remain and continue together by the space of one hour after such command made by the proclamation so as aforesaid, against the form of the statute in such case made and provided, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, to the great disturbance and terror of the quiet and peaceable subjects of our said lord the now king, and against the peace of our said lord the king, his crown and dignity. ^a

Proclamation.
[* 632]

By stat. 1 *Geo. I.* stat. 2, ch. 5, § 1, it is enacted, "*That if any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, at any time after the last day of July, in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by anyone or more * justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor,*

Twelve persons or more assembled after proclamation, &c. felony without clergy.

[* 633]

^a One *Barlow* was indicted for a similar offence at *Stafford* Lent assizes, 1783, convicted, and executed. *Vide Cro. Cir. Ass.* 269.

bailiff

bailiff or bailiffs, or other head-officer, or justice of the peace of any city or town corporate, where such assembly shall be, by proclamation to be made in the king's name, in the form herein after directed, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more (notwithstanding such proclamation made), unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such proclamation or request made by proclamation, that then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony without benefit of clergy, &c."

§ 2. "The justice, &c. [Any one authorized as before] shall, among the said rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence to be, while proclamation is making, and after that, shall openly, and with loud voice, make or cause to be made proclamation in these words, or like in effect: Our sovereign, &c." [Verbatim as set forth in the preceding indictment.]

§ 3. Those assembled and not dispersing within an hour may be seized, &c. and if they make resistance, the persons killing them, &c. shall be indemnified. They may be seized, &c.

Opposing, &c. the making of such proclamation, felony without benefit, &c. and if the proclamation be obstructed, rioters shall, nevertheless, suffer as felons, § 5. Opposing proclamation.

§ 4. If any person: unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull * down, any church or chapel, &c. or any dwelling-house, barn, stable, or other outhouse, they shall suffer death without benefit, &c. Demolishing churches, &c. houses, barns, &c. [* 634]

§ 6. Parties injured by such demolishing or pulling down, either wholly or in part, shall recover their ^b damages against the hundred, &c.

Extended to mills, and the works thereto belonging, by 9 Geo. III. ch. 29, § 1.

It is not perfectly clear from the penning of the above act of Geo. I whether it is necessary there should have been twelve or more rioters, in order to entitle the party injured to his action; but according to the most obvious construction, that number is not necessary to constitute the felony created by the fourth section. Noted under Hyde v. Cogan, Dougl. (1st edit.) 674. Construction as to the number of rioters, &c.

a Indictment against one of the rioters in June, 1780, for beginning to pull down a house in Coleman-street, London, Cro. Cir. Ass. 509. Vide Royce's case, 4 Burr. 2073.

b If rioters demolish the doors and windows of a house, and, having thereby obtained entrance into it, destroy the goods and furniture thereof, the hundred are answerable, in an action on this section, for the damage done to the furniture as well as to the house. Rateliff v. Eden, &c. Corp. 435. Vide also Hyde v. Cogan, &c. Dougl. (1st edit.) 673.

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R O B B E R Y.

Indictment of felony for robbery from the person on the highway.

[* 635] *Middlesex.* **T**HE jurors for our lord the king, upon their oath present, That *E. H.* late of the parish of *Hornsey*, in the county of *Middlesex*, labourer, on the third day of *September*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the * county aforesaid, in the ^a king's highway there, in and upon one *W. T.* in the peace of God and our said lord the king then and there being, feloniously did make an assault, and him the said *W. T.* in bodily fear and danger of his life, in the highway aforesaid, then and there feloniously did put, and one gold ^b watch, of the value of eighteen pounds [*recite all the goods taken*], of the goods and chattels of the said *W. T.* from the person, and against the will, of the said *W. T.* in the highway aforesaid, then and there feloniously and ^c violently did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

1. *Robbery is a felony by the common law, committed by a violent assault upon the person of another, by putting him in ^d fear, taking from his person his money, or other goods, of any value whatsoever.* 3 Inst. 68; 1 H. H. 536.

2. *If A. steals goods in the county of B. and carries them into the county of C. he may be indicted in either county for larceny, but can be indicted for robbery only in the county of B.* 1 H. H. 536. Vide ante, 409, § 14.

[* 636] 3. *If A. assaults B. and bids him deliver his purse, and B. delivers it accordingly, this is a taking; and if B. refuse, and then A. prays him to give or lend him money, which B. doth accordingly, this is robbery, for B. doth it under the same fear; so it is if B. throw his purse or cloak into a bush, and A. takes it up and carries it away; so if B. flying from * the thief lets fall his hat, and the thief take it and carry it away, for all is the effect of the same fear.* 1 H. H. 533. ^c

4. *If A. without drawing his weapon requires B. to deliver his purse, who does so, and then A. finding little in it, delivers it back, this is a robbery.* Ibid. Vide *Peat's case*. Le. Cro. Ca. 224.

5. *If a thief compels a man by fear to swear to fetch him a sum of money, which he doth accordingly, and the thief receives the same, it is robbery.* 1 H. H. 532.

a If in a field say, "in a certain field and open place near the king's highway," and so through the remainder of the indictment. Vide ante, page 20; 2 Harv. ch. 33, § 25; and the abstract of the next statute.

b For a more ample description of property, vide ante, 203, 204. For money, see the next precedent.

c Vide § 10, &c. post.

d Vide § 10, 11, &c. post.

e A taking in the presence is a taking from the person, and, in such case, the latter should be stated in the indictment; but in special verdicts it must be expressly found, that the party robbed was present at the taking up. 2 Stra. 1015.

For the form of a special verdict with jury process, &c. see the table to 3 Ld. Raym. title *Indictment*.

6. If a man's purse be fastened to his girdle, and in struggling the girdle breaks, upon which the purse falls to the ground, it is no robbery, because no taking; but if the thief takes up the purse, and lets it fall again, it is a robbery, though he never more takes it up. *Ibid.* 533. Vide also 2 Stra. 1015.

7. All in company are principals, though one actually does it. 1 H. H. 533.

8. A B. and C. assaulted D. with intent to rob him on the highway, but robbed him not, because D. escaped from them: B. went from the rest in the same highway, and robbed E. out of their view; for this A. was arraigned and convicted, though he assented not, because they all came with an intent to rob. *Pudsey's case*, *ibid.* 534.

9. And so it is if A B. and C. come to commit a robbery, and A. stands sentinel at the hedge-corner to watch if any come, and B. and C. commit the robbery, though A. was not actually present, nor within view, but at a distance from them; and the like in burglary. *Ibid.* Vide *Fost.* 129.

* 10. Without putting in fear or violence it is no robbery, but only larceny; and therefore every indictment for a highway robbery should state, that the property was taken violently from the person. 1 H. H. 534. See the observations after the next statute, and § 14, 15. [* 637]

11. But this putting in fear does not imply, that any great degree of terror or affright in the party robbed is necessary to constitute a robbery; it is sufficient that so much force, or threatening by word or gesture, be used, as might create an apprehension of danger, or oblige a man to part with his property without or against his consent: thus, if a man be knocked down without previous warning, and stripped of his property while senseless, though strictly he cannot be said to be put in fear, yet this is undoubtedly a robbery; or if a person with a sword drawn begs an alms, and it is given him through mistrust and apprehension of violence, this is a felonious robbery; so if, under a pretence of sale, a man forcibly extorts money from another, neither shall this subterfuge avail him. 4 Black Com. 242.

12. So where a robber by menaces and violence puts a man in fear, and drives away his cattle before his face. *Ibid.*

13. To obtain money from a person against his will, by threatening to accuse him of unnatural practices, amounts to the crime of robbery. *Donally's case*, Le. Cro. Ca. 199.

14. If a man forces another to part with his property for the sake of preserving his character from the imputation of having been guilty of an unnatural crime, it will amount to robbery, although the party * was under no apprehension of personal danger. *Hickman's Case*, Le. Cro. Ca. 257. [* 638]

15. Where a bailiff handcuffs a prisoner under pretence of carrying him to prison with greater safety, and by means of this violence extorts money, he is guilty of robbery. *Gascoigne's case*, *ibid.* 260.

^a Vide § 14, *post*.

^b *Fost.* 128. Sir Michael Foster adds, that suppose the true man makes a manful resistance, but is overpowered, and his property taken from him by the mere dint of superior strength, it is a robbery.

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As to snatching property in the streets, &c. see Baker's case, in the same book, 264, 265, and the other cases there cited. For further information as to the crime of robbery, see 1 H. H. ch. 46; 1 Haw. ch. 34; and the doctrine under Larceny, ante.

By stat. 23 Hen. VIII. ch. 1, § 3, *No person who shall be found guilty of robbing any person in or near about the highways, nor their abettors, procurers, helpers, maintainers, or counsellors, shall have the benefit of clergy, but suffer death.* Vide also 25 Hen. VIII. ch. 3, § 2; 1 Edw. VI. ch. 12, § 10; 5 & 6 Ph. & M. ch. 4. *Reward on conviction, as in page 20, ante.*

The words "put in fear," as expressed in the former editions, are not mentioned in any of the statutes relating to highway robbery; but as it appears by the authority cited in the tenth section of the doctrine under this head, that there must be a putting in fear to constitute a robbery, it seems necessary that those words should be set forth as in the preceding indictment. It is also said, that the word rob, in a legal construction, always includes the idea of force and violence. Trapshaw's case, Le. Cro. Ca. 365.

Indictment of felony for robbing a person violently in a dwelling-house.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *E. L.* late of the parish of *St. Botolph* without *Aldgate*, in the county of *Middlesex*, labourer, and *H. T.* * late of the same, carpenter, on the fifth day of *December*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in the dwelling-house of one *J. J.* there situate, in and upon *A.* the wife of the said *J. J.* in the peace of *God* and our said lord the king then and there being, feloniously did make an assault, and her the said *A.* in bodily fear and danger of her life, in the said dwelling-house, then and there feloniously did put, and one linen pocket, of the value of one penny, and three pieces of gold coin, of the proper coin of this realm, called guineas, of the value of three pounds and three shillings, of the goods, chattels, and monies of the said *J. J.* ^a from the person, and against the will, of the said *A.* in the dwelling-house aforesaid, then and there violently and feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

Note, In this case there is no reward.

By stat. 23 Hen. VIII. ch. 1, § 3, *Those robbing of any person in his dwelling-house, he, his wife, children, or servants being therein and put in fear, are ousted of clergy; so of the accessory before, &c. So of him who shall feloniously take away any goods or chattels, being in any dwelling-house, the owner or any other person being therein and put in fear; or shall rob any dwelling-house in the day-time, any person being therein; and the like of the accessory before, &c.* 3 & 4 Will. & M. ch. 9, § 1. Vide also 5 & 6 Edw. VI. ch. 9, § 4; *House-breaking and Houses*, ante.

^a This, being personal property, must be laid in the husband. Vide 1 Bac. Abr. 289, and 1 Com. Dig. title *Baron & Feme*, (E. 3.)

S A C R I L E G E.

* S A C R I L E G E.

[* 640]

Indictment of felony for sacrilege, in stealing goods out of a church.

Surry. **T**HE jurors for our lord the king upon their oath present, That *A. N.* late of the parish of *Kingston* upon *Thames*, in the county of *Surry*, labourer, and *L. C.* late of the same, labourer, on the fourth day of *June*, in the twenty first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one silver cup, of the value of six pounds, of the goods and chattels of the parishioners of the said parish (in the custody of *W. T.* and *D. E.* then churchwardens of the same parish), in the church of the parish aforesaid then and there being found, then and there feloniously and sacrilegiously did steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.^a

As to Sacrilege, viz. the felonious taking of goods out of any parish church, or other church or chapel; the principal is ousted of clergy by statutes 23 Hen. VIII. ch. 1, § 3; 25 Hen. VIII. ch. 3, § 2; and lastly by 1 Edw. VI. ch. 12, § 10.

And by the said stat. of 23 Hen. VIII. *The accessory before, if found guilty by verdict or confession, * was ousted of clergy, but that is repealed by the said stat. of Edw. as to all accessories.*

[* 641]

The stat. of 4 & 5 Ph. & M. ch. 4, extends not to this case of sacrilege, for it takes away clergy from an accessory before the fact to robbery in any dwelling-house, &c. and does not mention robbing of churches and chapels: but if robbing a church, &c. should be attended with burglary, then clergy would be excluded from the accessories before, by stat. 3 & 4 Will. & M. ch. 9, § 1. 2 H. H.

And Lord Hale^b says, That certainly clergy was not taken away in case of sacrilege at common law; or if it were, yet the stat. of 25 Edw. III. ch. 4, restored it in that case as well as others; and the statutes of 23 Hen. I. and 1 Edw. VI. had been needless in this case, if sacrilege were ousted of clergy at common law, and accordingly is the book of 26 Affiz. 19. and consequently it is mistaken in Poulter's case, 11 Co. Rep. 29.

S E D I T I O U S W O R D S.

Indictment for speaking seditious words against the king, and defaming the officers of his guards.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *J. S.* late of the parish of *St. Martin* in the *Fields*, in the county of *Middlesex*, gentleman, being a pernicious, wicked, and evil-disposed person, of depraved, impi-

^a An indictment against the actor and abettors (before the fact) for stealing plate out of the chapel belonging to *Magdalen-college*, in *Oxford*, upon which the parties were tried at the Lent assizes, 1786, convicted, and one of them executed, *Cro. Cir. Aff.* 177.

^b 2 H. H. 366.

ous,

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[* 642]

ous, and disquiet mind, disposition, and conversation, and contriving, practising, and falsely, maliciously, turbulently, and seditiously * intending the peace and common tranquillity of our lord the king, and this kingdom of *England*, to disquiet, molest, and disturb, and to bring our most serene lord *George* the third, king of *Great-Britain*, into great hatred, contempt, and scandal with all his liege and faithful subjects of this realm, and the colonels, captains, and other military officers and soldiers of our said lord the king to scandalize and vilify; and that the said *J. S.* his most wicked contrivances, practices, and intentions aforesaid, to compleat, perfect, and render effectual, on the tenth day of *May*, in the twenty-first year of the reign of our said sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, having discourse then and there with divers persons concerning our said lord the king, and the army and guards of our said lord the king, and of their business, in the presence and hearing of divers liege subjects of our said lord the king, falsely, maliciously, unlawfully, wickedly, and seditiously, of our said lord the king, and of his colonels and officers, did then and there, in the presence and hearing of the said liege subjects, say, assert, affirm, and pronounce, and with a loud voice declare these false, fictitious, malicious, seditious, and opprobrious *English* words following, that is to say, “ the colonels and the rest of the officers (meaning the said colonels and officers in the guards of our said lord the king) are a company of rogues and villains, for their business is to uphold their master (meaning our said lord the king,) who (meaning our said lord the king) is a villain and a rogue, and never kept his word in any thing he (meaning our said lord the king) said;” and that the said *J. S.* in further prosecution of his malice towards our said lord the king before had, afterwards, to wit, on the same day * and year aforesaid, at the parish aforesaid, in the county aforesaid, falsely, maliciously, diabolically, seditiously, and most wickedly, in the presence and hearing of divers other liege and faithful subjects of our said lord the king, did say, utter, and with a loud voice pronounce, assert, and affirm, that our said lord the king was a villain and a rogue, and never kept his word in any thing he said, to the great scandal of our said lord the king, and the said colonels and other officers of the guards of our said lord the king, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.^a

[* 643]

Indictment for speaking seditious words against the king.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. Martin* in the *Fields*, in the county of *Middlesex*, yeoman, being a pernicious, wicked, seditious, and evil-disposed person, and greatly disaffected to our said lord the king, and contriving and intending the liege subjects of our said lord the king to incite and move to hatred and dislike of the person of our said lord the king, and the government established within this realm, on the tenth day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the

^a See the form of a seditious libel, accusing the king's troops, &c. *Cro. Cir. Aff.* 112.

county

county aforesaid, in the p[re]sence * and hearing of divers liege subjects of our said lord the king, with whom the said *A. B.* then and there was talking of and concerning our said lord the king, unlawfully, maliciously, and wickedly did publish, utter, and declare with a loud voice these *English* words following, to-wit, "he (meaning our said lord the king) is a whelp and a bastard," to the great scandal of our said lord the king, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

All contempts against the king's person or government are very highly criminal, and punishable with fine and imprisonment, and sometimes with the pillory, by the discretion of the judges, upon consideration of all the circumstances of the case: and they may be committed in various ways, viz. (amongst others) by charging the government with oppression or weak administration; the doing any act which impliedly encourages rebellion; the endeavouring to frighten the king into a change of his measures, with threats of the uneasiness of his subjects; spreading false rumours concerning the king's intention; charging him with a breach of his coronation oath; speaking contemptuously of him, as by cursing him, &c. or giving out that he wants wisdom, valour, or steadiness, or, in general, doing any thing which may lessen him in the esteem of his subjects, and weaken his government, or raise jealousies between him and his people. 1 Haw. ch. 23.

Vide *Treason*, post.

Indictment for felony for forcibly entering a dwelling-house, with intent to cut serge in the loom, and for cutting and destroying the same.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *H. S.* late of the parish of *St. Leonard, Shoreditch*, in the county of *Middlesex*, labourer, and *A. W.* late of the same, labourer, on the seventh day of *December*, in the twenty third year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, the house of one *J. D.* there situate, then and there feloniously and by force did break and enter into, with intent feloniously and maliciously to cut and destroy a certain quantity of woollen serge, in a certain loom, used in the making thereof, belonging to him the said *J. D.* in the same house then and there being, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, do further present, That the said *H. S.* and *A. W.* afterwards, to wit, on the same seventh day of *December*, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, twenty yards of woollen serge, of the value of four pounds, of the goods and chattels of the said *J. D.* in a certain loom, used in the making of woollen serge, belonging to him the said *J. D.* in the said house of him the said *J. D.* then and there being, then and there, feloniously, * wilfully, and maliciously did cut and destroy, (they the said *H. S.* and *A. W.* then not having, nor either of them then having, the consent of the said *J. D.* the owner aforesaid, so to do,) against the

First count, for breaking, &c. with intent to cut, &c.

Second count, for cutting serge, omitting the breaking, &c.

PRECEDENTS of INDICTMENTS.

the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

By stat. 22 Geo. III. ch. 40, § 1, *If any person, by day or by night, break into any house or shop, or enter by force into any house or shop, with intent to cut or destroy any serge or other woollen goods in the loom, or any tools employed in the making thereof; or shall wilfully and maliciously cut or destroy any such serges or woollen goods in the loom, or on the rack; or shall burn, cut, or destroy any rack on which any such serges or other woollen goods are hanged in order to dry; or shall wilfully and maliciously break or destroy any tools used in the making any such serges or other woollen goods, not having the consent of the owner so to do, every such offender, being thereof lawfully convicted, shall be guilty of felony, without benefit of clergy.*

§ 2. *To the same effect as to silk goods, or tools used in the manufacturing thereof.*

§ 3. *The like as to linen and cotton manufactures, &c.*

§ 4. *Repeals the seventh clause of 12 Geo. I. ch. 34, which was similar to the first section above set forth, the legislature deeming it expedient to include those several offences in one act.*

*The eighth clause of 12 Geo. I. extends it to combers and frame-work knitters; which, as to combers, seems to be still in force, as likewise the sixth clause, which makes it felony within clergy, in * those who shall assault or abuse any master woolcomber or master weaver, or send threatening letters for not complying with their demands, or illegal bye-laws, &c. who may be transported for seven years.*

[* 647]

By stat. 5, § 3, *No person or persons who shall, from and after, &c. "be indicted for feloniously cutting and taking, stealing or carrying away, of any cloth or other woollen manufactures from the rack or tenter in the night-time," and thereupon found guilty by verdict, &c. out of clergy.*

By § 4, *The judges may reprieve and transport them, &c.*

By stat. 15 Geo. II. ch. 27, § 1, *In case any cloth or woollen goods remaining upon the rack or tenters, or woollen yarn or wool left out to dry, shall be stolen or taken away in the night time, it shall be lawful for a justice of the peace to issue his warrant to search the houses of suspected persons; and if any such property be found in their custody they are to be taken before some justice, to whom they must give a satisfactory account, by evidence, respecting their right to the possession of the same; and on default thereof they shall be deemed convicted, &c. and forfeit treble value to the owner, &c.*

The third offence is felony, punishable by transportation for seven years; and if they return, &c. out of clergy.

§ 3. *"Provided, that this act shall not extend to alter or repeal any law now in force for the punishment of any person or persons stealing or receiving such cloth, woollen goods, woollen yarn, or wool, except in such cases where the proof is laid upon the offender or offenders as aforesaid; any thing herein contained to the contrary notwithstanding."*

Vide Linen, ante, 424.

a But now by stat. 28 Geo. III. ch. 55, § 4, *Persons entering shops, &c. with intent to destroy, or destroying, any frame-work knitted pieces, or frames, &c. are, upon conviction, to be transported for fourteen years.*

SERVANTS.

S E R V A N T S.

* S E R V A N T S.

[* 648]

Indictment of felony against a servant for embezzling his master's goods, delivered to him to keep for the master's use.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *A. L.* late of the parish of *St. George, Hanover-square*, in the county of *Middlesex*, labourer, on the eighth day of *November*, in the twenty-first year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. then being a servant of and to one *G. V.* and not an apprentice, or a person within the age of eighteen years, he the said *G. V.* did then and there, upon confidence and trust, deliver unto his said servant one silver tankard, of the value of five pounds, of the goods and chattels of him the said *G. V.* safely to keep the same goods and chattels to the use of him the said *G. V.* and that he the said *A. L.* afterwards, to wit, on the twentieth day of the same month of *November*, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, ^a did withdraw himself from the said *G. V.* his said master, and feloniously did go away with the same silver tankard above mentioned, to the intent to steal the same, and defraud the said *G. V.* his said master, thereof, contrary to the trust and confidence in him the said *A. L.* put by the said * *G. V.* his said master, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

[* 649]

By stat. 21 *Hen. VIII. ch. 7, § 1*, *Servants having caskets, jewels, money, goods, or chattels delivered to them by their masters or mistresses safely to be kept to the use of their said masters or mistresses, and after such delivery withdrawing themselves from their masters or mistresses, and going away with the said caskets, &c. or any part thereof, to the intent to steal the same, and defraud his or their said masters or mistresses thereof, contrary to the trust and confidence in him or them put by his or their said masters or mistresses; or else being in the service of his said master or mistress, without assent or commandment of his master or mistress, if he embezzle the same caskets, &c. or any part thereof, or otherwise convert the same to his own use, with like purpose to steal it, (if the said caskets, &c. be of the value of forty shillings, or above,) then the same false, fraudulent, and untrue act or demeanor shall be adjudged felony; and he or they so offending shall be punished as other felons are punished for felonies committed by the course of the common law.*

§ 2. *This act not to extend to apprentices, nor any person within the age of eighteen years, who shall embezzle goods delivered them to keep to the use of their master, &c.*

Clergy taken away by stat. 27 Hen. VIII. ch. 17. Both the above statutes made perpetual by stat. 28 Hen. VIII. ch. 2. Afterwards repealed by 1 Mary, sess. 1, ch. 1, § 5. Which said statute of 21 Hen. VIII. ch. 7, is revived, and again made perpetual, by stat. 5 Eliz. ch. 10, § 3.

^a If the servant does not withdraw himself, but continues in his service, then say, "without the assent or commandment of the said *G. V.* his said master, feloniously did embezzle the same silver tankard, and convert the same to his own use, with intent," &c. [Go on and conclude as before.]

No

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No time limited to prosecute.

[* 650] 1. *Though the statute of 21 Hen. VIII. exempt an apprentice or servant, under the age of eighteen years, * from the pain of felony newly enacted by this statute, namely, where goods are actually delivered to him, yet it leaves him in the same condition, respecting felony at common law, as if he were not excepted; and therefore if a man's butler or shepherd under the age of eighteen years, or his apprentice, take away his goods feloniously without actual delivery, though they are under the value of forty shillings, an indictment of felony will lie at common law.* 1 H. H. 667, 668.

2. *If the master deliver an obligation to his servant to receive the money thereby due, and the servant receive the money of the obligee, and goeth away with the same with intent to steal it, this is no offence within the statute, because he had not the money by the delivery of his master.* 3 Inst. 105.

3. *The law is the same if the master delivers cattle to his servant to look after, and he sells them, &c. and runneth away with the money; for he had not the money by the delivery of his master.* Dalr. (edit. 1727) 191.

4. *But it is said, that if the master deliver to his servant twenty pounds in silver to change into gold at the goldsmith's, or leather to make shoes, and he run away with the gold or shoes, it is felony.* 1 H. H. 668.

Vide 315, 404, ante.

S H E E P.

Indictment of felony for killing sheep, with an intent to steal part of their carcases.

[* 651] *Middlesex.* **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *Twickenham*, in the * county of *Middlesex*, labourer, on the twelfth day of *February*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, five sheep, of the value of three pounds, of the goods and chattels of *C. D.* then and there being found, wilfully and feloniously did kill, with a felonious intent to steal part of the carcases, that is to say, the inward fat, of the said five sheep, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

By stat. 14 Geo. II. ch. 6, § 1, it is enacted, *That if any person or persons shall feloniously drive away, or in any other manner feloniously steal, one or more sheep, or other cattle, of any other person or persons whatsoever, or shall wilfully kill one or more sheep, or other cattle, of any other person or persons whatsoever, with a felonious intent to steal the whole carcase or carcases, or any part or parts of the carcase or carcases, of any one or more sheep, or other cattle, that shall be so killed, or shall assist or aid any person or persons to commit any such offence or offences; then the person or persons guilty of any such offence, being thereof convicted in due form of law, shall be adjudged guilty of felony, and suffer death, as in cases of felony, without benefit of clergy*^b

a If for stealing sheep, see the directions under *Horse-stealing*, page 401.

b It has been lately determined, that it is larceny to pull the wool from the bodies of live sheep or lambs with intent to steal. Vide ante, 435, n.

S H I P S.

§ 2. And every person who shall apprehend and prosecute to conviction any such offender shall have a reward of ten pounds, in or-
 der to which he shall have a certificate signed by the judge, before
 the end of the session or assizes, certifying such conviction, and where
 * the offence was committed, and that such offender was appre-
 hended and prosecuted by the person claiming the reward; and in
 case more than one person shall claim a right to the said reward,
 the judge in such certificate shall direct what share shall be paid to
 each claimant; which certificate being tendered to the sheriff, he
 shall pay the same within one month without deduction, and on de-
 fault of payment shall forfeit double the sum he ought to have paid,
 to be recovered in any of his majesty's courts of record at Westmin-
 ster, by action of debt, &c. with treble costs of suit.

Reward for tak-
 ing and convict-
 ing sheep-steal-
 ers.

[* 652]

And by stat. 15 Geo. II. ch. 34, it is enacted, That the said
 stat. of 14 Geo. II. was meant and intended, and shall be construed,
 deemed, and taken, to extend to any bull, cow, ox, steer, bullock,
 heifer, calf, and lamb, as well as sheep, and to no other cattle
 whatsoever.

Extended to
 bull, cow, ox,
 &c.

S H I P S.

Indictment of felony, in the Admiralty court, for wilfully burning
 and destroying a ship, having merchandize on board.

Admiralty of **T**HE jurors for our lord the king upon their oath
 England. present, That E. J. late of London, mariner, and
 N. W. late of the same, mariner, after the twenty-fourth day of June,
 in the year of our Lord one thousand seven hundred and eighteen, to
 wit, on the seventh day of December, in the twenty-first year of the
 reign of our sovereign lord George the third, king * of Great-Britain,
 &c. with force and arms^b, upon the high sea, within the jurisdic-
 tion of the admiralty of England, about half a league distant from
 Leghorn in Italy, in parts beyond the seas, then being mariners, be-
 longing to a certain merchantship call the *Dolphin*, did then and
 there wilfully and feloniously burn and destroy the said ship, and
 direct and procure the said ship to be burnt and destroyed, to the
 great prejudice of divers persons, merchants (to the jurors aforesaid
 as yet unknown), that had laden goods thereon, against the form
 of the statute in such case made and provided, and against the peace
 of our said lord the king, his crown and dignity.

[* 653]

By stat. 4 Geo. I. ch. 12, § 3, If any owner of, or captain,
 master, mariner, or other officer belonging to any ship shall, after
 the twenty fourth day of June, in the year of our Lord one thou-
 sand seven hundred and eighteen, wilfully cast away, burn, or
 otherwise destroy the ship of which he is owner, or unto which he
 belongeth, or in any manner of wise direct or^b procure the same to

Destroying ships
 to the prejudice
 of insurers, &c.

a If the offence be committed out of the Admiralty jurisdiction, insert the
 county in the margin, and the parish in the body of the indictment, as in
 common cases. Vide abstract of 11 Geo. I. § 7, and the first precedent un-
 der *Smugglers*, post.

b An offence of this description is not within the statute, except the offend-
 ing party actually belongs to the ship. *Pow's case*, Le. Cro. Ca. 46. A
 question in this case was submitted to the consideration of the judges, whether
 an accessory upon land to an offence afterwards put in execution on the high
 seas is within the jurisdiction of the court of Admiralty? but no opinion was
 given. See the next precedent under *Smugglers*.

be

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be done, to the prejudice of any person or persons that shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, be shall suffer death.

[* 654]

Making holes in a ship, &c. felony without clergy.

* By § 1, the following stat. of Ann. is made perpetual.

By stat. 12 Ann. stat. 2, ch. 18, § 5, If any person or persons shall make, or be assisting in the making, any hole in the bottom, side, or any other part of any ship or vessel in distress, or shall steal any pump belonging to any ship or vessel so in distress, or shall be aiding or abetting in the stealing such pump, or shall do any thing tending to the immediate loss or destruction of such ship or vessel, such persons are made guilty of felony, without benefit of clergy.

The offence against 4 Geo. I. made felony without clergy.

Some doubts having arisen touching the nature of the offence provided against by the first mentioned act, and the trial and punishment to be had and inflicted for the same, by stat. 11 Geo. I. ch. 29, § 6, it is therefore enacted, That if any owner of, or captain, master, officer, or mariner belonging to any ship or vessel, shall, after the four and twentieth day of June, one thousand seven hundred and twenty five, wilfully cast away, burn, or otherwise destroy the ship or vessel of which he is owner, or to which he belongeth, or in any wise direct or procure the same to be done, with intent or design to prejudice any person or persons that hath or shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, or if any owner or owners of such ship or vessel, the person or persons offending therein, being thereof lawfully convicted, shall be deemed and adjudged a felon or felons, and shall suffer as in cases of felony, without benefit of clergy.

How such offences are to be tried.

[* 655]

§ 7. If any such offence be committed within the body of any county within this realm, the offender shall be tried in such county as other cases of felonies are tried; and if the offence shall be committed upon the high seas, the same shall be tried in such manner as by the statute of 28 Hen. VIII. *(intituled, For Pirates) is directed and appointed for trying felonies done upon the high seas.

Vide 1 Ann. stat. 2, ch. 9, § 4 & 5; 22 & 23 Car. II. ch. 11, § 12; Naval stores, 469; and Piracy, ante. Vide also Smugglers, post.

Indictment for stealing to the value of forty shillings in a ship, &c.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That A. B. late of the parish of S. in the county of Middlesex, labourer, on the first day of March, in the twenty first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, twenty pounds weight of indigo, of the value of fifty shillings, of the goods, wares, and merchandize of C. D. and E. F. then and there being in a certain ship called the Ratler, upon the navigable river of Thames, and then and there found, feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

Stat. 24 Geo. II. ch. 45, enacts, That all and every person or persons that shall, at any time from and after the twenty-fourth of June, one thousand seven hundred and fifty-one, feloniously steal any goods, wares, or merchandize, of the value of forty shillings, in any

S H O P S.

ship, barge, lighter, boat, or other vessel or craft, upon any navigable river, or in any port of entry or discharge, or in any creek belonging to any navigable river, &c. or upon any wharf or key adjacent to any navigable river, &c. or shall be present, aiding, and assisting, &c. shall be excluded from the benefit of clergy.

Vide *Wreck*, post.

* S H O P, &c.

[* 656]

Indictment of felony for stealing above the value of five shillings in a shop, commonly called shop-lifting.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *S. D.* late of the parish of *St. Clement Danes*, in the county of *Middlesex*, labourer, on the first day of *August*, in the twenty-first year of the reign of our sovereign lord *George the third*, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid. one cloth coat, of the value of fifteen shillings, and one cloth waistcoat, of the value of ten shillings, of the goods and chattels of one *I. B.* in the shop of him the said *I. B.* then and there being found, then and there ^a privately and feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

By stat. 10 & 11 *Will. III.* ch. 23, § 1, *If any person shall, at any time or times, by night or in the day-time, from and after the twentieth day of May, in the year of our Lord one thousand six hundred ninety-nine, in any shop, warehouse, coach-house, or stable, privately and feloniously steal any goods, wares, or merchandizes, being of the value of five shillings or more, (although such shop, &c. be not broke open, &c.) or shall assist, hire, or command any person to commit such offence, &c. he shall not have the benefit of clergy.*

As to the reward by certificate of exemption, &c. vide page 32, ante.

^a *If the offence be for stealing out of the coach-house, warehouse, or stable, then you say in the indictment, "in the coach-house, or stable, or warehouse, privately and feloniously," as the case may be.*

[* 657]

Note. The goods stolen must be the property of the owner of the shop, &c. otherwise the offender does not lose his clergy; for this act was made as a remedy for the owners of the shops to preserve their goods for sale, &c. Vide *Howard's case*, *Fost.* 77, and *Stone's case*, *Le. Cro. Ca.* 307 ^c If (for such private stealing) the jury find the value of the goods to be under five shillings, the offender will, of course, be entitled to his clergy; but, under the direction of the court, the jury may find him guilty of common larceny. See *Foster*, 78.

^a For the necessity of this word, vide *Larceny*, ante, 412, § 21, &c. and *1 Haw.* ch. 35, § 3.

^b It has been doubted whether the box coat or any part of the cloaths of a coachman can be considered as part of the proper or usual furniture of a stable (within the meaning of this act), which seems only to include bridles, saddles, horse-cloths, &c. *2 Haw.* (6th edit.) 491, n. Vide also *Sea's case*, *Le. Cro. Ca.* 277.

^c Money is not within the act, the words being "goods, wares, or merchandizes." *Fost.* 79; *2 Haw.* (6th edit.) 491; *Mills's case*, *Le. Cro. Ca.* 48.

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S M U G G L E R S.

Indictment for murder, by shooting, against several smugglers, the principal in the first degree being on shore when he shot the party stricken within the Admiralty jurisdiction. (Combes's case.)

[* 658] Admiralty of **T**HE jurors for our lord the king upon their England. oath present, That *W. P.* late of *London*, labourer, *J. E.* late * of the same, labourer, *H. V.* late of the same, labourer, *George Combes*, late of the same, labourer, &c. [*five others of the like addition*], and divers other evil-disposed persons (whose names to the jurors aforesaid are as yet unknown), not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the fifteenth day of *July*, in the twenty-fourth year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, upon the high sea, within the jurisdiction of the *Admiralty of England*, about the distance of half a mile from *Christ-Church* harbour, in the county of *Southampton*, in and upon *William Allen*, then and there being in the peace of God and our said lord the king, feloniously, wilfully, and of their malice aforethought did make ^a an assault; and that the said *W. P.* a certain gun, of the ^b value of five shillings, and then and there charged with gunpowder and one leaden bullet, which gun he the said *W. P.* in both his hands then and there had and held, then and there feloniously, wilfully, and of his malice aforethought did shoot off and discharge to, against, and upon him the said *William Allen*; and that the said *W. P.* with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said *W. P.* shot, discharged, and sent forth as aforesaid, then and there feloniously, wilfully, and of his malice aforethought did strike, penetrate, and wound the said *William Allen* in and upon the right side of the belly of him the said *William Allen*, giving to him the said *William Allen* then and there with the leaden bullet aforesaid, so as aforesaid by him the said *W. P.* shot, discharged, and sent forth out of the gun aforesaid, by force * of the gunpowder aforesaid, in and upon the said right side of the belly of him the said *William Allen*, one mortal wound, of the depth of four inches, and of the breadth of half an inch, of which said mortal wound he the said *William Allen*, from the said fifteenth day of *July*, in the twenty-fourth year aforesaid, until the sixteenth day of the said month of *July*, in the year aforesaid, upon the high sea aforesaid, within the jurisdiction aforesaid, did ^c languish, and languishing did live, on which said sixteenth day of *July*, in the twenty fourth year aforesaid, upon the high sea aforesaid, within the jurisdiction aforesaid, he the said *William Allen* of the mortal wound aforesaid died; and that the said *J. E. H. V. George Combes*, &c. [*the names of the other five*], and the said other persons (whose names to the jurors aforesaid are as yet unknown), at the time of committing the felony and murder aforesaid, then and there, upon the high sea aforesaid, within the jurisdiction aforesaid,

Stroke.

[* 659]

Languished and died at sea.

Aiders.

a *Vide Regina v. Ingram & Ux. Sulk. 384.*

b *Vide ante, 439, n.*

c See the authorities in the last line of page 439.

said,

S M U G G L E R S.

said, feloniously, wilfully, and of their malice aforethought, were present, aiding, helping, abetting, comforting, assisting, and maintaining the said *W. P.* to kill and murder the said *William Allen* in manner and form aforesaid: and so the jurors aforesaid, do say, And so, &c. That the said *W. P.* *J. E. H. V. George Combes, &c. [as before]*, and the said other persons (whose names to the jurors aforesaid, are as yet unknown), then and there, upon the high sea aforesaid, within the jurisdiction aforesaid, feloniously, wilfully, and of their malice aforethought, in manner and form aforesaid, did kill and murder the said *William Allen*, against the peace of our said lord the king, his crown and dignity.

*Combes was tried on the preceding indictment in the high court of Admiralty at the Old-Bailey, and found guilty; but on account of the situations of the parties at the time of receiving the mortal wound, his case was submitted to the consideration of the judges to determine whether the crime was cognizable in that court. The matter was argued by counsel twice, viz. first in the Exchequer chamber, Michaelmas Term, 1785, and lastly at Serjeants-inn, the 20th of January 1786, before all the judges (except lord Loughborough), who were of opinion, "That the prisoner was tried by a competent jurisdiction;" which was delivered by Mr. Justice Willes on the following day at the Old-Bailey, before Sir James Marriot, judge of the Admiralty court, who pronounced sentence of death upon the prisoner; whereupon he was executed.

[* 660]
The judges determination as to the jurisdiction, &c.

Indictment of felony, for unlawfully and feloniously assembling, with others, in order to be aiding and assisting, &c. in rescuing and carrying away uncustomed goods.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *George Vincent*, late of the parish of *H.* in the county of *S.* labourer, otherwise called *G. B.* late of the same, labourer, *E. L.* late of the same, mariner, *T. N.* late of the same, labourer, and divers other persons, to the number of three persons and more (whose names are as yet unknown to the said jurors), being malefactors and disturbers of the peace of our said lord the king, after the twenty-fourth day of *July*, which was in the year of our Lord one thousand seven hundred and forty-six, to wit, on the sixth day of *November*, in the twenty eighth* year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish of *H.* in the said county of *S.* being then and there armed with fire arms, and other offensive weapons, to wit, with guns, pistols, carbines, pole axes, large sticks, bludgeons, clubs, and loaded whips, unlawfully, riotously, routously, and feloniously did assemble themselves together, in order to be aiding and assisting in rescuing and taking away from *T. Q.* then and there being one of the officers of the excise of our said lord the king, a large quantity of foreign brandy, to wit, one hundred gallons of foreign brandy (the same foreign brandy being uncustomed goods, and goods liable to pay duties, which had not been paid or secured), after seizure of the said foreign brandy by the said *T. Q.* as being one of such officers of the excise as aforesaid, to wit, on the sixth day of *November*, in the twenty-eighth year aforesaid, at the parish of *H.* in the said county of *S.* in contempt of our said lord the king and his laws, against the form of the statute in that case made and provided, and against the peace of our

First count for being assembled, armed, in order to be aiding, &c.

[* 661]

PRECEDENTS of INDICTMENTS.

Substance of the second count. *sa*id lord the king, his crown and dignity. [Second count, for being assembled with others, &c. as in the first, except stating that they did aid and assist certain other persons, to the jurors unknown, in rescuing and taking away from the said T. Q. &c. after seizure, &c.] And

Third count, commencing with the seizure, stating that the parties were aiding, &c.

[* 662]

And the jurors aforesaid, upon their oath aforesaid, do further present, That on the sixth day of *November*, in the twenty-eighth year of the reign of our said lord the king, at the said parish of *H.* in the said county of *S.* one *T. Q.* then and there being one of the officers of the excise of our said lord the king, did duly seize a large quantity of foreign brandy, that is to say, one hundred gallons of foreign brandy being * uncustomed goods, and goods liable to pay duties, which had not been paid or secured). And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *G. V.* otherwise called *G. B. E. L. T. N.* and divers other persons, to the number of three persons and more (whose names are as yet unknown to the said jurors), being malefactors and disturbers of the peace of our said lord the king, after the first day of *July*, which was in the year of our Lord one thousand seven hundred and forty-six, to wit, on the said sixth day of *November*, in the twenty-eighth year of the reign of our said lord the king, with force and arms, at the said parish of *H.* in the said county of *S.* being then and there armed with fire-arms, and other offensive weapons, to wit, with guns, &c. [as before] unlawfully, riotously, routously, and feloniously did assemble themselves together, and being then and there so assembled as last aforesaid, and being then and there so armed as last aforesaid, unlawfully, riotously, routously, and feloniously were aiding and assisting in rescuing and taking away from the said *T. Q.* then and there being one of such officers of the excise of our said lord the king, the said last-mentioned foreign brandy, after such last-mentioned seizure of the said *T. Q.* then and there being one of such officers of the excise as aforesaid, to wit, on the said sixth day of *November*, in the twenty-eighth year aforesaid, at the parish of *H.* aforesaid, in the said county of *S.* in contempt of our said lord the king, and his laws, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

The parties were tried on this indictment, convicted, and executed.

[* 663]

* It appeared by a special verdict, on an indictment for a similar offence, that the parties were above three in company, and that all of them had fire arms, except the prisoner, who had only a common ^a horsewhip; upon which the court seemed to be of opinion that he was not guilty; but they gave time to the attorney-general to consider of it, who declined any further argument. *Fletcher's case*, Easter Term, 15 Geo. II. 2 Stra. 1166.

It has been determined, that the precedent in the fifth edition is bad, because the greater part of the matter contained in it is reduced to a misdemeanor. See the bottom note in the next page.

Armed persons, to the number of three, assembled, &c.

By ^b stat. 19 Geo. II. ch. 34. § 1, it is enacted. That if any persons, to the number of three, or more, armed with fire arms, or other offensive weapons, shall, from and after the twenty-fourth day of *July*, in the year of our Lord one thousand seven hundred and forty-six, be assembled, in order to be aiding and assisting in the

^a Vide note in page 669, post.

^b This extends to Scotland.

illegal

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illegal exportation of wool, or other goods prohibited to be exported, or the carrying of wool or other such goods in order to such exportation, or in the running, landing, or carrying away prohibited or uncustomed goods, or goods liable to pay any duties which have not been paid or secured; or in the illegal relanding of any goods whatsoever, which have been shipped or exported upon debenture or certificate; or in rescuing or taking away the same, after seizure, from any officer or officers of the customs or excise, or other his majesty's revenue, or other person or persons employed by him or them, or assisting him or them, or from the place where they shall be lodged by him or them; or in rescuing any person who shall be apprehended for any of the offences made felony by this or any other act relating to the revenues of customs* or excise; or in preventing the apprehending any person who shall be guilty of any such offence; or in case any persons, to the number of three, or more, so armed as aforesaid, shall, after the said twenty-fourth day of July, be so aiding or assisting, or if any person shall, from and after the said twenty-fourth day of July, have his face blacked, or wear any Aiding, disguised, or resisting, &c. or shall forcibly binder, obstruct, assault, oppose, or resist any of the officers of the customs or excise, or other his majesty's revenue, Maiming, &c. in the seizing or securing any such goods; or if any person or persons, from and after the said twenty-fourth day of July, shall maim or dangerously wound any officer of the customs or excise, or any other his majesty's revenue, in his attempting to go on board any ship or vessel within the limits of any of the ports of this kingdom, or shoot at, maim, or dangerously wound him when on board such ship or vessel, and in the due execution of his office or duty, then every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, felony without clergy, without benefit of clergy.

§ 2. If any person shall be charged with being guilty of any of the offences aforesaid, before one of his majesty's justices of the peace, Justices of the peace, &c. or one of his justices of the court of King's Bench, by information of one or more credible person or persons, upon oath, by him or them to be subscribed, such justice of the peace, or of the King's Bench, shall shall certify information, &c. forthwith certify under his hand and seal, and return such information to one of the principal secretaries of state of his majesty, his heirs, or successors, who is to lay * the same, as soon as conveniently may be, before his majesty, his heirs or successors, in his or their privy council; whereupon it shall be lawful for his majesty, his heirs or successors, to make his or their order, in his or their privy council, thereby requiring and commanding such offender or offenders, Order of surrender, &c. to surrender him or themselves within the space of forty days after the first publication thereof in the London Gazette, to the lord chief justice, or any other of his majesty's justices of the court of King's Bench, or any of his majesty's justices of the peace, who, upon such offender or offenders surrendering him or themselves, is to commit him or them, without bail or mainprize, to the county gaol, or to the gaol or prison of the place where he or they shall surrender, to the end that he or they may be forthcoming to answer the offence or offences wherewith he or they shall stand charged according to due

* Felony under this part of the statute is virtually repealed, by 19 Geo. III. ch. 69. post, which gives power to justices to hear and imprison, &c. Vide Hutchinson's case, Le. Cro. Ca. 310, 313.

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to be printed in the Gazette,	course of law; which order the clerks of his majesty's privy council shall cause to be forthwith printed and published in the two successive London Gazettes, and to be forthwith transmitted to the sheriff of the county where the offence shall be committed, who shall, within
and proclaimed, &c.	fourteen days after the receipt thereof, cause the same to be proclaimed between the hours of ten in the morning and two in the afternoon, in the market places, upon the respective market days of two market towns, in the same county, ^a near to the place where such offence shall be committed; and a true copy of such order shall be affixed upon some public place in such market towns: and in case
Offenders not surrendering,	such offender or offenders shall not surrender him or themselves, pursuant to such order of his majesty, his heirs or successors, he or they, so neglecting or refusing to surrender him or themselves as aforesaid, or escaping after such surrender, shall, from the day appointed for his or their surrender as [*] aforesaid, be adjudged, deemed, and
[* 666] attainted of felony, &c.	taken to be convicted and attainted of felony, and shall suffer pains of death, as in cases of a person convicted and attainted by verdict and judgment of felony, without benefit of clergy; and it shall be lawful for the court of King's Bench, or the justices of oyer and terminer or general gaol delivery for the county or place where such
and may be executed.	person shall be, to award execution against such offender and offenders, in such manner as if he or they had been convicted and attainted in the said court of King's Bench, or before such justices of oyer and terminer or general gaol-delivery respectively.
Those who harbour, &c.	§ 3. Every person who shall, after the time appointed as aforesaid for the surrender of any person so charged upon oath with any of the offences aforesaid shall be expired, harbour, receive, conceal, aid, abet, or succour such person, knowing him to have been so charged as aforesaid, and to have been required to surrender himself by such order as aforesaid, and not to have surrendered pursuant to such order, being prosecuted for the same within one year after the offence committed, and lawfully convicted thereof, shall be
to be transported, &c.	guilty of felony, and shall be transported as a felon for the space of seven years; and if he return into Great-Britain or Ireland before the expiration of the said term, he shall suffer as a felon, without benefit of clergy
Trial if secured, &c.	§ 4. If an offender be taken and secured before the expiration of the time limited by the order in council, all proceedings on the order shall cease, and the offender shall be tried by due course of law.
Offences may be tried in any county.	§ 5. For the better and more impartial trial of any indictment or information, which shall be found, commenced, or prosecuted, for any of the offences made felony by this or any other act relating to the revenues of customs or excise, it is enacted, That every such offence may be enquired of, examined, tried, and determined in any county in England, in such manner [*] and form as if the fact had been therein committed: provided that no attainder for any of the offences made felony by virtue of this act, shall make or work any corruption of blood, loss of dower, or forfeiture of lands or tenements.
[* 667] No corruption of blood.	§ 6. If any officers shall be wounded or beat in endeavouring to seize any goods, or to apprehend any offender, or any goods shall be rescued, satisfaction shall be made by the hundred, rope, or latib; and in case of death by such beating, &c. the executors or administrators of the deceased shall receive of the hundred, &c. 100l.
The hundred, &c. shall satisfy damages, and executors, &c.	

^a Vide Rex v. Harvey, noted ante, 163.

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§ 10. And also gives a reward of five hundred pounds for apprehending, and fifty pounds extraordinary to any person wounded in endeavouring to apprehend an offender, and one hundred pounds to the executors of any such person killed. Reward for apprehending, &c.

ibid. An offender, against whom no order in council has issued, discovering and apprehending any other offender against whom such order shall be made, he shall be acquitted of his own offence, and all other like offences for which no prosecution shall have been commenced, and have his share of the reward. Accomplice discovering, &c.

§ 11. If an offender, before such order in council shall have been made, discover and cause two or more of his accomplices to be apprehended, he shall have fifty pounds for each offender convicted, as a reward, and be acquitted. *Vide* 26 Geo. III. post. or causing two or more, &c.

By stat. 19 Geo. III. ch. 69, § 10 & 12, it is enacted, *That if, from and after the first day of August, one thousand seven hundred and seventy-nine, any person shall obstruct, &c. any officer of the customs or excise in seizing uncustomed or prohibited goods, or shall rescue, or attempt to rescue, the same, or after seizure shall destroy or damage any casks, boxes, or package, wherein the same shall be contained, such officers, or persons acting in their aid, may arrest the offender, and forthwith carry him before a justice near to the place where the offence was committed, and the justice shall, if he sees cause, commit him till the next general quarter session; where, if he be convicted, he shall be committed to the house of correction to hard labour, not exceeding three years, nor less than one.* Justices may hear and determine, &c.
[* 668]

§ 13. Offenders so convicted are, by this act, indemnified, on condition of entering into the army, or on board his majesty's ships. Exempt by servitude.

By stat. 24 Geo. I. ch. 47, § 11, *If any person or persons shall, from and after the first day of October, one thousand seven hundred and eighty-four, maliciously shoot at any ship, &c. belonging to the navy, customs, or excise, or at, or dangerously wound, any officer of the navy, customs, or excise (or his assistant, &c.) when in the execution of his duty, within the limits of any port, harbour, or creek of Great-Britain, or within four leagues of any part of the coast thereof, such offenders, and their aiders, shall suffer death as felons, without benefit of clergy.* Shooting at ships or officers within certain limits.

The before-mentioned statute of 19 Geo. III. and several others having continued the said act of 19 Geo. II. to different periods, it is now by stat. 26 Geo. III. ch. 80. § 1. enacted. "*That so much of the said act of the nineteenth year of the reign of his late majesty as relates to persons going armed or disguised, in defiance of the laws of customs and excise, and to the relief of officers of the customs in informations upon seizures, and all and every the methods, orders, directions, rules, proclamations, penalties, punishments, rewards, matters, and things, provided, settled, ordered, directed, imposed, given, and required by the said act of the nineteenth of his said late majesty, relative to the surrender, proclaiming, apprehending, harbouring, and punishing such offenders, shall be, and the same is, hereby further continued until the twenty-ninth day of September, one thousand seven hundred and eighty-eight, and from thence to the end of the then next session of parliament.*" Further continued by 28 Geo. III. ch. 23, to Sept. 29, 1795, &c. Offences, rewards, directions, proclamations, &c. of 9 Geo. II. continued to 1795.
[* 669]

a There must be a deliberate assembling to bring the offenders within this law. *Hutchinson's case, Le. Cro. Ca. 310.* What shall and shall not be deemed offensive weapons within the meaning of the statute of Geo. II. *Ibid.* 314.

SOLDIERS.

PRECEDENTS of INDICTMENTS.

S O L D I E R S.

Indictment of felony for hiring and retaining a person to serve the French king as a soldier.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *P. J.* late of the parish of *St. John, Wapping*, in the county of *Middlesex*, labourer, being a person of a wicked and malicious mind and disposition, and contriving and intending unlawfully to seduce, draw, and intice one *J. W.* a subject of the crown of *Great-Britain*, from his the said *J. W.*'s allegiance and obedience, which he the said *J. W.* as a natural-born subject of the said crown of *Great-Britain*, owed to our present lord the king, as his supreme, true, and natural lord, and to enlist and enter himself the said *J. W.* as a soldier in the service of a foreign prince, to wit, *Lewis* the present *French* king, he the said *P. J.* on the seventeenth day of *January*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, did wilfully, maliciously, and feloniously hire and retain the said *J. W.* then being a subject of our said lord the king, by promising and assuring him the said *J. W.* that if he (meaning him the said *J. W.*) would go abroad, and enter into the service of the *French* king, he (again meaning him the said *J. W.*) should be made a serjeant, and should have the liberty of returning to *England* when he (again meaning the said *J. W.*) should think fit; and did also then and there unlawfully, corruptly, and feloniously treat and entertain the said *J. W.* with meat and drink, at the costs and charges of him the said *P. J.* and did also then and there give and deliver to the said *J. W.* the sum of five shillings, in monies numbered, of lawful money of *Great-Britain*, with an intent to cause the said *J. W.* to enter himself to serve a foreign prince, to wit, *Lewis*, the present *French* king, as a soldier, (without leave or licence of our said lord the king first had and obtained for enlisting any of his subjects of our said lord the king to serve any foreign prince, state, or potentate as soldiers, under the sign manual of our said lord the king,) in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *P. J.* in further prosecution of his wicked and malicious contrivance and intention aforesaid, afterwards, to wit, on the said seventeenth day of *January*, in the said twenty-first year of the reign of our said lord the king, with force and arms, at the parish aforesaid, in the county aforesaid, wilfully, maliciously, and feloniously did cause and procure the said *J. W.* being a subject of our said lord the king, to embark on board a certain ship then and there lying and being on the river of *Thames*, with an intent to cause the said *J. W.* to go beyond the seas, in order to be * enlisted to serve a foreign prince, to wit, *Lewis*, the present *French* king, as a soldier, (without leave or licence of our said lord the king first had obtained for enlisting any of the subjects of our said lord the king to serve any foreign prince, state, or potentate as soldiers, under

[* 670]

Second count.

[* 671]

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der the sign manual of our said lord the king,) in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

By stat. 9 Geo. II. ch. 30, § 1, it is enacted, *That if any subject of the crown of Great-Britain, from and after the twenty-fourth day of June (then) next, shall, within the kingdom of Great-Britain, or Ireland, or from and after the twenty-ninth day of September (then) next, without the same, enlist or enter himself, or if any person shall procure any subject of his majesty, his heirs or successors, to enlist or enter himself, or hire or retain any person, being a subject of his majesty, his heirs or successors, with an intent to cause such person to enlist or enter himself, or procure any person, being a subject to his majesty, his heirs or successors, to go beyond the seas, or embark, with an intent and in order to be enlisted to serve any foreign prince, state, or potentate as a soldier, without leave or licence of his majesty, his heirs or successors, first had and obtained for enlisting any of the subjects of his majesty, his heirs or successors, to serve any such foreign prince, state, or potentate as soldiers, under the sign manual of his majesty, his heirs or successors, every such person so offending, being thereof lawfully convicted, shall be taken, deemed, and adjudged to be guilty of felony, and shall suffer death, without benefit of clergy.*

Subjects enlisting, &c. or others causing them so to do, felony without clergy.

§ 2. *All offences committed against this act, out of this realm, may be alleged to be committed, and may * be laid, and enquired of, and tried in any county in England.* [* 672]

Trial, &c.

§ 3. *If any person so enlisted, inveigled, or inticed to go beyond seas, &c. in any foreign service as a non-commissioned officer, or private soldier, without his majesty's license, &c. shall, within fourteen days after such enlisting, or agreement to go beyond seas, voluntarily discover upon oath, before any of his majesty's justices of the peace, or other civil magistrate, the person or persons by whom he was so enlisted, &c. as aforesaid, so as he or they may be apprehended and convicted of the said offence, such person, so discovering as aforesaid, shall be indemnified from the penalties of this act, and all other penalties whatsoever, on account of the said offence.*

Indemnification if they discover the inticer within 14 days.

A perpetual law ; no time limited to prosecute.

See 29 Geo. II. ch. 17, §. 4.

S T O L E N G O O D S .

Indictment of felony for receiving money to help a person to stolen goods, and not apprehending the felon.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That on the first day of *January*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish of *St. Martin* in the *Fields*, in the county of *Middlesex*, one gold watch, with a gold chain, of the value of seventeen pounds of goods and chattels of one *J. L.* (by a certain felon, to the jurors aforesaid as yet unknown,) from the person of him the said *J. L.* privily, secretly, and without the knowledge of * him the said *J. L.* with force and arms, was then and there feloniously stolen, taken, and carried away.

[* 673]

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away. And the jurors aforesaid, upon their oath aforesaid, do further present, That *R. D.* late of the parish of *St. Paul, Covent-garden*, in the said county of *Middlesex*, labourer, having a secret acquaintance with the said felon, to the jurors aforesaid as yet unknown, afterwards, to wit, on the sixth day of the same month of *January*, in the year aforesaid, at the said parish of *St. Paul, Covent-garden*, in the county aforesaid, (notwithstanding he the said *R. D.* did not apprehend, and cause to be apprehended, the said felon who stole the said watch and chain as aforesaid, and cause the said felon to be brought to his trial for the same, and give evidence against him,) he the said *R. D.* with force and arms, under pretence and upon account of helping the said *J. L.* to his said watch and chain, so feloniously stolen as aforesaid, did then and there wilfully, unlawfully, and feloniously take, of and from the said *J. L.* the sum of seven pounds, of lawful money of *Great-Britain*, and did then and there deliver the same watch and chain, so as aforesaid feloniously stolen, to him the said *J. L.* against the form of the statute in such case made and provided, to the great damage of him the said *J. L.* to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. *

[* 674]

By stat 4 Geo. I. ch. 11, § 4, it is enacted, *That wherever any person taketh money or reward, directly or indirectly, under pretence or upon account of helping any person or persons to any stolen goods or chattels, every such person, so taking money or reward * as aforesaid, (unless such person doth apprehend, or cause to be apprehended, such felon who stole the same, and cause such felon to be brought to his trial for the same, and give evidence against him,) shall be guilty of felony, and suffer the pains and penalties of felony, according to the nature of the felony committed in stealing such goods, and in such and the same manner as if such offender had himself stolen such goods and chattels, in the manner and with such circumstances as the same were stolen.*

Note, *The notorious Jonathan Wild was tried on the above-recited clause, convicted, and executed, 10 Geo. I.*

T R A D E.

Indictment for exercising an art or trade, not having served seven years as an apprentice, upon the statute of Elizabeth.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *W. G.* late of the parish of *St. George, Hanover-square*, in the county of *Middlesex*, yeoman, ^b on the first day of *November*, in the twenty-second year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. and continually afterwards, until the seventh day of *May*, in the year aforesaid, that is to say, for the space of six whole months and upwards, at the parish aforesaid, in the county aforesaid, for his own lucre and gain, * did set up, occupy, use, and exercise the

[* 675]

a *Vide Index to Le. Cro. Ca. tit. Stolen Goods, and Accessary, ante, 129.*

b In the former editions it was set forth that the defendant was not a tradesman in the fifth year of *Queen Elizabeth*; but as such an averment would appear ridiculous at this day, it has been expunged, which is warranted by the case of *Ball, qui iam, v. Cobus, 1 Burr. Rep. 366, 367.*

art, mystery, or manual occupation of a brewer^a, being an art, mystery, or manual occupation used within^b England, on the twelfth day of *January*, in the fifth year of the reign of the late *Elizabeth*, queen of *England* aforesaid, in which same art, mystery, or manual occupation of a brewer he the said *W. G.* was not brought up for the space of seven years as an apprentice, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

By the statute made at a session of parliament holden on the twelfth day of *January*, in the fifth year of Queen *Elizabeth*, (ch. 4, § 31,) it is enacted, "*That after the first any of May next coming it shall not be lawful to any person or persons, other than such as now do lawfully use or exercise any art, mystery, or manual occupation, to set up, occupy, use, or exercise any craft, mystery, or occupation now used or occupied within the realm of England or Wales, except he shall have been brought up therein seven years, at the least, as an apprentice in manner and form aforesaid,*" [the clauses and ^c trades, to which the word applies, are too numerous to be inserted here,] *upon pain that every person so offending forfeit forty shillings for every month: one * half of which shall go to the^d king, and the other to the party suing or prosecuting, &c.* § 39.—*How and where recoverable*, *ibid.* 31 *Eliz. ch. 5, § 7*; *Salk.* 370, 373; *Hob.* 183, 184; *Cro. Eliz.* 737; *Cro. Jac.* 85, 178, 538; and 2 *Lord Raym.* 767.

[* 676]

There seems much difference of opinion in the above cases. It is however said, that an indictment or information lies in the sessions of the city, borough, &c. as well as of the county; though by the said statute of 31 *Eliz.* suits for using an art wherein the party is not brought up, &c. shall be in the quarter sessions of the peace, or assizes of the county where the offence has been committed, or leet, &c. for it is added, "and not elsewhere out of the said county." 5 *Com. Dig.* title Trade (D. 7.); *The Queen against Franklin*, *Salk.* 370; but *The Queen against Taylor*, 2 *Lord Raym.* 767, is expressly to the contrary. The case in *Raym.* is reported as of Easter term, 1 *Ann.*; and that in *Salk.* as of Mich. 3 *W. & M.* but which in truth was determined in the 3d year of *Ann.*; and therefore considered as the better authority. See *The King against Strong*, 1 *Burr. Rep.* 251.

This has been considered as a hard law, and therefore the^e fol- Exposition of the statute.

a The want of this averment would be a good exception to an indictment. *Salk.* 611.

b An indictment using the words *Great-Britain*, instead of *England*, quashed. *Rex v. Hotch*, 1 *Str.* 552.

c Sir *Michael Foster* declared the number of those trades to be so great that he had once taken the pains to extract and arrange them alphabetically. 2 *Burr.* 1037.

It has been doubted whether a *pippin-monger* is within the statute; though it is reported, that all his skill is in so laying his apples as to keep them from rotting. 3 *Bac. Abr.* 552.

d Except the offence be committed in a city or town corporate; in which case § 45 directs, that the forfeiture shall be levied to the use of such city or town: but an information *qui tam*, &c. will lie, though the forfeiture be given to the corporation; for that shall be intended only for the king's part. *Cro. Car.* 316.

e But this is to be considered where there has been no prosecution with effect during seven years. *Wallen, qui tam, v. Holton*, 1 *Black. Rep.* 233. *Vide also Rex v. Chase*, 2 *Wils.* 40.

lowing

PRECEDENTS of INDICTMENTS.

lowing of a trade for seven years, or serving an apprenticeship beyond the sea, will excuse the party prosecuted from the payment of any penalty. Salk. 67, 613.

[* 677]

* Courts of justice will hold a prosecutor to the strict letter of the act; for the policy of it was to have trades carried on by skilful persons, and not to affect the ingenious artist, who may not have served the time in question. Thus far may be collected from the opinion of Lord Mansfield, in the case of *Raynard v. Chase*, 1 Burr. Rep. 6, 7; 2 Will. 40.

In addition to which it is said, that no encouragement was ever given to prosecutions to this statute, and that it would be for the common good if it was repealed. 3 Mod. 317; 3 Bac. Abr. 551. For further information, vide *Rex v. Pemberton*, 2 Burr. Rep. 1035; *Beach, qui tam, v. Turner*, 4 Burr. Rep. 2449; 3 Bac. Abr. 551, 552; and the Doctrine of Indictments, 112, § 92, ante.

Limitation of
penal suits and
prosecutions.

By stat. 31 Eliz. ch. 5, § 5. All actions, suits, bills, indictments, or informations shall be had, brought, sued, or exhibited, for any forfeiture given by any penal statute, within two years next after the offence committed, if at the suit of the king only; and (except as to the statute of tillage) within one year where the party sues, or prosecutes, for the king and himself: but if an act of parliament limits a shorter period, it must be pursued. Ibid. § 6.

Venue.

By stat. 21 Jac. I. ch. 4, § 1, it is enacted, "That all offences hereafter to be committed against any penal statute, for which any common informer or promoter may lawfully ground any popular action, bill, plaint, suit, or information, before the justices of assize, justices of nisi prius or gaol-delivery, justices of oyer and terminer, or justices of peace in their general or quarter sessions, shall, after the end of this present session of parliament, be commenced, sued, prosecuted, tried, recovered, and determined by way of action, plaint, bill, information, or indictment, before the justices of assize, justices of nisi prius, justices of oyer and terminer, and justices of gaol-delivery, or before the justices of peace of every county, city, borough, * or town corporate, and liberty, having power to inquire of, hear, and determine the same, within this realm of England, or dominion of Wales, wherein such offences shall be committed, in any of the courts, places of judicature, or liberties aforesaid respectively, only at the choice of the parties which shall or will commence suit or prosecute for the same, and not elsewhere, save only in the said counties, or places usual for those counties, or any of them," &c. Vide *Hicks's case*, Salk 373.

[* 678]

TRANSPORTATION.

Indictment of felony, in returning from transportation.

Caption of gaol-
delivery at the
Old-Bailey a

Middlesex. **T**HE jurors for our lord the king upon their oath present, That at the general session of the delivery of the gaol of our lord the king of *Newgate*, holden for the county of *Middlesex*, at *Justice Hall*, in the *Old Bailey*, in the suburbs of the city of *London*, on *Wednesday* the fifth day of *June*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. before Sir *J. S.* knight, chief

a Caption at the *London* side, *Cro. Cir. Aff.* 122. Vide page 5, ante, n.

baron

TRANSPORTATION.

baron of the court of *Exchequer* of our said lord the king, Sir *W. H. A.* knight, one of the justices of our lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, Sir *H. G.* knight, one of the justices of his majesty's court of *Common Pleas*, and others their fellows, justices of our said lord the king, assigned to deliver the gaol of our said * lord the king of *Newgate* of the prisoners therein being, *E. L.* late of the parish of *St. Luke*, in the county of *Middlesex*, labourer, according to due course of law was tried, *For that he the said E. L. on the sixth day of May, in the twentieth year of the reign of our said lord the king, with force and arms, at the parish aforesaid, in the county aforesaid, one brass tea-kettle, of the value of four shillings; two brass candlesticks, of the value of two shillings; and one callimanco gown, of the value of five shillings, of the goods and chattels of one I. W. then and there being found, feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.* And thereupon, by a certain jury of the country, between our said lord the king and the said *E. L.* in that behalf then and there, to wit, on the said fifth day of *June*, in the twenty-first year aforesaid, at and in the court of the said session, so holden as aforesaid, duly taken, he the said *E. L.* was duly convicted of the said felony upon the indictment aforesaid; and thereupon the aforesaid *E. L.* by the above-named justices of our said lord the king, assigned to deliver his gaol of *Newgate* aforesaid of the prisoners therein being, was ordered to be ^a "transported beyond the seas for and during the term of seven years," as by the record thereof more fully appears; and that the said *E. L.* afterwards, to wit, on the twelfth day of *August*, in the said twenty-first year of the reign of our said lord the king, with force and arms, feloniously, and without any lawful cause whatsoever, * was at large within this ^b kingdom of Great-Britain, to wit, at the parish of *St. Martin* in the *Fields*, in the county aforesaid, before the expiration of the term of seven years, for which he the said *E. L.* was so ordered to be transported as aforesaid, against the form of the ^c statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

[* 679]
Former indictment.

[* 680]

By stat. 16 Geo II. ch. 15, § 1. it is enacted, *That if any felon, Convicts re- or other offender, already ordered, or hereafter to be ordered, for turning, &c. transportation, or who hath already, or hereafter shall agree, to death. transport him or herself on certain conditions to any of his majesty's colonies and plantations in America, either for life or any number of years, shall be afterwards at large within any part of the kingdom of Great-Britain, without some lawful cause, before the expiration of the term for which he or she were so ordered to be transported, or had so agreed to transport him or herself, all and every such person or persons, being thereof lawfully convicted, shall suffer death as in cases of felony, without benefit of clergy.*

a One Benjamin Fisher was tried on an indictment formed in this manner at Worcester Summer assizes, 1790, convicted, and condemned to die.

Indictment at Chester assizes for being at large in Great-Britain after sentence of death, respite, and order of transportation, such order being made at the assizes next after the trial, *Cro. Cir. Aff.* 411.

b The word of the statute.

c *Vide Doctrine of Indictments, ante* III, § 85.

PRECEDENTS of INDICTMENTS.

How tried.

§ 2 enacts, *That offenders shall be tried as mentioned in stat. 6 Geo. I. ch. 23, which by § 7 thereof, directs, That they may be tried either before justices of assize, oyer and terminer, or gaol-delivery for the county, city, or liberty, where he, she, or they shall be apprehended and taken, or before any of those justices for that county, city, or place, from whence he, she, or they were ordered to be transported; and that the^a certificate of conviction and order, &c. by the clerk of assize, &c. shall be * sufficient proof that such persons have before been convicted and ordered to be transported. And by § 5 of said stat. Geo. I. Persons contracting for transporting such felons may secure them as they think fit; and those who rescue, &c. shall suffer death.*

What shall be evidence.

[* 681]

Rescuing, &c.

Reward on conviction.

§ 3 of said stat. Geo. II. allows a reward of twenty pounds to any person who shall discover, apprehend, and prosecute to conviction of felony without benefit of clergy, any such offender so found at large within the kingdom of Great-Britain, to be paid in like manner as is directed respecting highwaymen. Vide page 20, ante. Vide also stat. 4 Geo. I. ch. 11; 8 Geo. III. ch. 15. The latter has relation to the power of the judge in making an order of transportation after the assizes are over, where the felon has been capitally convicted, reprieved, recommended, and pardoned upon condition of transportation.^a

They may be transported elsewhere than to America, &c.

By stat. 19 Geo. III. ch. 74. § 1, *When any person shall be lawfully convicted of any grand or petty larceny, or other crime, for which he or she shall be liable to be transported to any of his majesty's colonies or plantations in America, the court may order such person to be transported to any parts beyond the seas, whether the same be in America or elsewhere.*

Former laws continued, &c.

§ 2. Hereby it is enacted, "*That when any such person, who hath already been, or shall hereafter be convicted, shall, in consequence thereof, be ordered to be transported to any parts beyond the seas, or if his majesty, his heirs and successors, shall hereafter be graciously pleased to extend the royal mercy to any offender convicted or attainted of any felony by which he or she is excluded from the benefit of clergy, or of * such statutes as are equivalent thereunto, upon the condition of transportation to any parts beyond the seas as aforesaid, then and in any such cases all laws, statutes, usages, and customs, now in force, with regard to the transportation of criminals to any of his majesty's colonies or plantations in America, and their punishment for being afterwards at large, within any part of the kingdom of Great-Britain, before the expiration of the several terms for which they were ordered to be transported, or had agreed to transport themselves, particularly the several provisions contained in an act made in the fourth year, &c. [it here sets out the titles of the before-mentioned acts of 4 Geo. I. 6 Geo. I. 16 Geo. II. and 8 Geo. III.] shall take place, be in force, and endure, with regard to the transportation of all such offenders as aforesaid, to any part or parts beyond the seas, and with regard to their punishment for being afterwards at large in this kingdom before the expiration*

[* 682]

^a The act directs, that this shall "briefly, and in few words, contain the effect and tenor," &c. which shews that it is not necessary to set out the whole record of conviction in an indictment.

^b By the same statute, such persons found at large, &c. shall suffer death; and those apprehending, &c. shall have a like reward as before mentioned. See *Madan's case*, Le. Cro. Ca. 220.

TRANSPORTATION.

of their respective terms, in like manner as if the same had been repeated and specially inserted in this act."

§ 3. When any person is convicted of felony for which he shall be liable to be burnt in the hand, the court may, instead thereof, impose on him a moderate fine, or order him to be ^awhipped: but, by

Burning in the hand.

§ 4, the act shall not abridge the power vested in the court of imprisoning offenders.

§ 5. His majesty is hereby empowered to appoint supervisors to erect penitentiary houses in any one of the counties of Middlesex, Essex, Kent, or Surry, for the purpose of confining and employing convicts therein. ^b

Penitentiary houses.

Continued to the first day of June, 1784; and by the following act, § 18, until June 1, 1787, &c.

Continuation.

* By 24 Geo. III. ch. 56, § 6, It shall be lawful for his majesty, by an order in writing, to be notified by one of his principal secretaries of state, or for any three or more justices of the peace acting in, &c. to direct the removal of any male offender, who shall be under sentence of death, but reprieved during his majesty's pleasure, or under sentence or order of transportation, and who, having been examined by an experienced surgeon or apothecary, shall appear to be free from any putrid or infectious distemper, and fit to be removed from the gaol or prison in which such offender shall be confined, to such place of confinement within England, or the dominion of Wales, either at land, or on board any ship or vessel in the river Thames, or any navigable or other river, or within the limits of any port of England or Wales, as his majesty, or any three of such justices, authorized as aforesaid, shall from time to time appoint, under the management of any overseer to be appointed, &c.

[* 683]

Removal on the river Thames, &c.

By § 1, his majesty in council, may appoint to what place beyond the seas felons shall be sent.

Transportation, &c.

§ 19 It is enacted, "That the provisions of this act, so far as the same extend to authorize the removal of offenders to temporary places of confinement, shall continue to be in force until the first day of June, 1787," &c.

Continuation.

By 27 Geo. III. ch. 2, (reciting so much of the first clause of 24 Geo. III. as relates to the transportation of felons of such parts as his majesty in council shall appoint; and that his majesty by two

New South Wales.

several orders in council had appointed certain felons, named in two lists annexed to the said orders, to be transported for the terms in their several sentences mentioned to the "eastern coast of New South Wales, or some one or other of the islands adjacent;" it is enacted, "That his majesty may, by his commission under the great seal, authorize the person to be appointed governor, or the lieutenant-governor, in ^a the absence of the governor, of such place as aforesaid, to convene from time to time, as occasion may require, a court of judicature for the trial and punishment of all such outrages and misbehaviours as, if committed within this realm, would be deemed and taken, according to the laws of this realm, to be treason or misprision thereof, felony or misdemeanor; which court shall consist of the judge advocate to be appointed in and for such place, together with six officers of his majesty's forces by sea and land; which

Order of transportation by the king in council.

[* 684]

Court of judicature.

Who are to be members thereof.

How trials shall be.

^a Manlaughter excepted.

^b This act contains seventy-four clauses, the purport of which is so extensive as to render the insertion of it in a work of this description impracticable, without rejecting more useful information.

PRECEDENTS OF INDICTMENTS.

court shall proceed to try such offenders, by calling such offenders respectively before that court, and causing the charge against him, her, or them respectively to be read over; which charge shall always be reduced into writing, and shall be exhibited to the said court by the judge advocate; and by examining witnesses upon oath, to be administered by such court, as well for as against such offenders respectively, and afterwards adjudging, by the opinion of the major part of the persons composing such court, that the party accused is or is not (as the case shall appear to them) guilty of the charge, and by pronouncing judgment therein (as upon a conviction by verdict) of death, if the offence be capital, or of such corporal punishment, not extending to capital punishment, as to the said court shall seem meet; and in cases not capital, by pronouncing judgment of such corporal punishment, not extending to life or limb, as to the said court shall seem meet."

Who shall execute, &c.

If five members do not concur, &c. proceedings to be transmitted, &c.

[* 685]
Court to be of record.

As to the maintenance of felons removed, and contracts for transportation.

Continuation of the former statutes.

§ 2. *The provost-marshal, or other officer appointed by the governor, or lieutenant governor, shall execute the judgment of the court; provided always, "That execution shall not be had or done on any capital convict or convicts, unless five persons present in such court shall concur in adjudging him, her, or them, so accused and tried as aforesaid, to be respectively guilty, until the proceedings shall have been transmitted to his majesty, and by him approved."*

* § 3. *The said court shall be a court of record, and have all such powers as by the laws of England are incident and belonging to a court of record.*

By stat. 28 Geo. III. ch. 24. *Offenders conveyed to temporary places of confinement under 24 Geo. III. ch. 56, shall be treated, maintained, &c. as offenders sentenced to hard labour, under 19 Geo. III. ch. 74; and his majesty may authorize persons to make contracts for the transportation of offenders, &c. as if made, and security given, as by the said stat of 24 Geo. III. is directed. So much of the last-mentioned statute continued to 1 June, 1787, is hereby, as likewise the whole of 19 Geo. III. further continued until June 1, 1793, &c.*^a

T R E A S O N S.

Indictment of high treason for endeavouring to draw a subject of the king to the Romish religion.

Warwickshire. **T**HE jurors for our lord the king upon their oath present, That *R. R.* late of the parish of *Bracles*, in the county of *Warwick*, clerk, little regarding the laws and statutes of this realm, and not fearing the pains and penalties therein contained, on the eighteenth day of *October*, in the twenty-first year, &c. with force and arms, at the parish aforesaid, *in the county aforesaid, feloniously and traitorously did put in prac-

[* 686]

^a A prisoner convicted of a capital crime, whose sentence is respited during the king's pleasure, and who, having received a pardon on condition of transportation for life, is afterwards found at large in Great-Britain without lawful cause, shall be referred back to his original sentence. *Madan's case, Le. Cro. Ca. 220. Vide also the cases of Miller, Aickles, and Batb, &c. ibid. 73, 330, 380.*

T R E A S O N.

tice and endeavour to withdraw one *J. D.* of the parish aforesaid, in the county aforesaid, taylor, a subject of our said lord the king, from his natural obedience to our said lord the king; and that the said *R. R.* on the same day and year, at the parish aforesaid, in the county aforesaid, for the intention aforesaid, feloniously and traiterously did practise and endeavour to withdraw the said *J. D.* from the religion under our said lord the king, within this realm most happily and excellently established, to the *Romish* religion, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.^a

Vide Stat. 23 *Eliz.* ch. 1, § 2, and 3 *Jac.* I. ch. 4, § 22.

Indictment of petty treason, against a woman, for poisoning her husband.

Surry. **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *Croydon*, in the county of *Surry*, widow, late wife of *J. B.* late of the same place, yeoman, deceased, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, and of her malice aforethought contriving, devising, and intending him the said *J. B.* her said late husband, to deprive of his life, and him feloniously and traiterously to kill and murder, on the eleventh day of *January*, * in the twenty-first year of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, feloniously, traiterously, wilfully, and of her malice aforethought, did mix and mingle a great quantity of deadly poison, called *arsenick*, into a quantity of water-gruel; and that she the said *A. B.* then and there, feloniously, traiterously, wilfully, and of her malice aforethought, did give and deliver the said water-gruel, so mixed with the poison as aforesaid, to the said *J. B.* her said then husband, to be drunk by him the said *J. B.* (she the said *A. B.* then and there well knowing the said *arsenick* to be a deadly poison), and that the said *J. B.* by the persuasion and instigation of the said *A* the said water-gruel, so mixed with poison as aforesaid (not knowing the same to be deadly poison), did then and there drink, and swallow down into his body, by which drinking and swallowing of the said water-gruel, so mixed with poison as aforesaid, the said *J. B.* then and there became sick and greatly distempered in his body, of which sickness and distemper he the *J. B.* from the said eleventh day of *January*, in the year aforesaid, until the twelfth day of the same month of *January*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said twelfth day of *January*, in the year aforesaid, the said *A. B.* at the parish aforesaid, in the said county of *S* of the said sickness, occasioned by the drinking of the said water-gruel, so mixed with poison as aforesaid, died: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said *A. B.* the aforesaid *J. B.* her said late husband, in manner and form aforesaid, feloniously, traiterously, wilfully, and of her malice aforethought, did poison, kill, and

[* 687]

a Indictment of high treason against Lord *George Gordon*, upon a charge of levying public war against the king by assembling, &c. in *June*, 1780, *Cro. Cir. Aff.* 290.

Vide Doctrine of Indictments, 119, and Seditious Words, ante.

PRECEDENTS of INDICTMENTS.

[* 688] murder, against the * peace of our said lord the king, his crown and dignity, ^a

1. *At common law, not only the offence specified in 25 Edw. III. stat. 5. ch. 2, but many others also were esteemed petit treasons, which are not so at this day; as piracy by a subject; discovery of the king's counsel by one of the grand jury; an attempt by a wife to kill her husband, &c. but by the above statute, no offence shall be adjudged petit treason, except in the following instances, viz first, where a servant kills his master; secondly, where a wife kills her husband; and thirdly, where an ecclesiastical man, secular or religious, kills his prelate to whom he owes obedience.* 1 Haw. (6th edit) 131, § 1 & 2.

2. *The murder of a father by his son shall not be punished as petit treason, unless the son may, by a reasonable construction, come under the word servant, serving the father for meat, drink, cloaths, or wages, in which case he shall be indicted by the name of a servant.* Ibid. § 2.

3. *But the murder of a mistress, or of a master's wife, has been adjudged petty treason within this statute; for notwithstanding the persons slain can in neither of these cases, in good grammar, come under the word master, yet they are clearly within the meaning thereof, being used here to signify any person, to whom another stands related as a servant.* Ibid. 132, § 3. ^b

[* 689] 4. *All procurers, aiders, or abettors in any of these offences are punishable within the meaning of this act, in the same manner as it was before; for the plain * intent of the statutes is only to restrain the judges from proceeding against other crimes as petit treasons, but no way to alter the law as to these.* 1 Haw. (6th edit) 132, § 5.

5. *Persons accused of petit treason shall be construed to be either not guilty at all, or principal, or accessory, according to the known rules of the law in other cases; and from hence it follows, that if the fact appears to have been done upon a sudden falling out, or in the party's necessary self-defence, &c. it cannot be petit treason; for inasmuch as all petit treason implies murder, and is the highest degree thereof, wherever the circumstances do not make the offence murder they cannot make it petit treason; and vice versa, generally wherever the circumstances are such as will make the killing of a stranger by a stranger murder, they make the killing of a husband or master, by a wife or servant, petit treason: yet it hath been adjudged, that if a wife or servant procure a stranger to kill the husband or master, in the absence of such wife or servant, neither the procurer nor actor are guilty of petit treason, but of murder only; because it is an allowed maxim, that the offence of an accessory can never be of a higher kind than that of the principal; but it seems clear, that if the wife or servant be either actually present when the crime is done, or present only in judgment of law, as being in the same house, but not in the same room, (in which case the hope of their immediate assistance encourages and emboldens the murderer to commit the fact, which otherwise, perhaps, he would not*

^a Vide Murder, 460, 461, and the Doctrine of Indictments, 109, § 75, 76, ante.

^b The murder of a person by one who is his servant, upon malice conceived during the service, though it be not within the express words, is within the meaning of them, inasmuch as it is but the execution of the treasonable intention of the party whilst he was a servant. Ibid. § 4.

T U R N P I K E S:

have dared to do, and makes them guilty in the same degree as if they had actually stood by with their swords drawn, ready to second the villainy,) such wife or servant, being principals as much as the stranger, are guilty of petit treason, and the stranger of murder; but it is said, that if a wife procure a servant to kill the husband, both are guilty of petit treason; and even if a * stranger procure a wife or servant to kill the husband or master, it seems that he may be indicted as accessory to petit treason. 1 Haw. (6th edit.) 132, 133, § 6. ^a

[* 690]

T U R N P I K E S.

Indictment of felony for cutting down and destroying a turnpike-gate.

Surry. **T**HE jurors for our lord the king upon their oath present, That J. J. late of the parish of C. in the county of Surry, labourer, J. B. late of the same, labourer, and divers other persons (to the jurors aforesaid as yet unknown), being wicked and malicious persons, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, on the fourteenth day of January, in the twenty-first year of the reign of our sovereign lord George the third, king of Great-Britain, &c. at the parish aforesaid, in the county aforesaid, a certain turnpike gate there, set up and erected to prevent passengers from passing by without paying the toll laid, and directed to be paid, by an act of parliament made in the year of the reign of intitled, an act, &c. [here set out the title of the act under which the toll is collected,] with force and arms, wilfully, maliciously, and feloniously did throw down, level, and destroy, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, * against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

[* 691]

By stat. 13 Geo. III. ch. 84. § 42. it is enacted, "That if any person or persons whatever shall, either by day or night, wilfully or maliciously pull down, pluck up, throw down, level, or otherwise destroy any turnpike-gate or turnpike gates, or any post or posts, rail or rails, wall or walls, or any chain, bar, or other fence or fences belonging to any turnpike gate, or any other chain, bar, or fence, of any kind whatsoever, set up or erected, or hereafter to be set up or erected, to prevent passengers from passing by without paying any toll laid, or directed to be paid, by any act or acts of parliament made for that purpose; or any house or houses erected, or to be erected, for the use of any such turnpike gate or turnpike-gates; or any crane, machine, or engine made or erected, or to be made or erected on any turnpike-road by authority of parliament, for weighing waggons, carts, or carriages; or shall forcibly rescue any person or persons, being lawfully in custody of any officer, or other person, for any of the offences before mentioned; that then, and in any of the said cases, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be trans-

The malicious destroying of turnpike-gates, houses, weighing engines, &c.

or rescuing, &c.

^a For further information on this subject, vide 3 Inst. ch. 2; 1 Haw. (6th edit.) ch. 32; 1 H. H. ch. 29; and p. 121, ante.

PRECEDENTS of INDICTMENTS.

felony, punishable by transportation, &c. *ported to one of his majesty's plantations abroad for seven years, or shall be committed to prison for any time not exceeding three years, at the discretion of the judge or court before whom such offender shall be tried; and any indictment for such offences shall and may be enquired of, examined, tried, and determined in any adjacent county within that part of Great-Britain called England, in such manner and form as if the facts had been therein committed."*

Where tried.

[* 692]

* U S U R Y.

Middlesex. **T**HE jurors for our lord the king upon their oath present, That *H. V.* late of the parish of *St. James, Clerkenwell*, in the county of *Middlesex*, gentleman, after the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and fourteen, to wit, on the sixteenth day of *October*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. at the parish aforesaid, in the county aforesaid, did lend to one *B. G.* the sum of one hundred pounds, of lawful money of *Great Britain*; and the said *B. G.* for securing the re-payment of the said sum of one hundred pounds, with lawful interest for the same, to the said *H. V.* or his order, he the said *B. G.* afterwards, to wit, on the same sixteenth day of *October*, in the year last aforesaid, at the parish aforesaid, in the county aforesaid, did give and deliver to the said *H. V.* a certain promissory note, subscribed with the proper hand-writing of him the said *B. G.* bearing date the day and year last aforesaid; by which said note the said *B. G.* did promise to pay to the said *H. V.* or his order, the said sum of one hundred pounds, with lawful interest for the same, six months after the date of the same note. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *H. V.* afterwards, to wit, on the twenty-second day of *April*, in the said twenty-first year of the reign of our said lord the king, at the parish of *St. James, Clerkenwell*, in the said county of *Middlesex*, unlawfully, unjustly, and corruptly did receive and take, of and from the said *B. G.* the sum of four pounds and * fifteen shillings, of lawful money of *Great-Britain*, of the monies of him the said *B. G.* for the forbearing and giving day of payment of the said sum of one hundred pounds from the said sixteenth day of *October*, in the year last aforesaid, until the said twenty-second day of *April*, in the year last aforesaid, which said sum of four pounds and fifteen shillings, so as aforesaid received and taken by the said *H. V.* for the forbearing and giving day of payment of the said sum of one hundred pounds from the said sixteenth day of *October*, in the year last aforesaid, until the said twenty-second day of *April*, in the year last aforesaid, did exceed the rate of five pounds for the loan of one hundred pounds for a year, to the great damage of the said *B. G.* against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. [*Vide observations, post.*]

[* 693]

By stat. 12 *Car. II.* ch. 13, it is enacted, "That no person or persons whatsoever, from and after the twenty-ninth day of *September*, in the year of our Lord one thousand six hundred and sixty, upon any contract shall, from and after the twenty-ninth day of *September*, take, directly or indirectly, for loan of any monies, wares, merchandize,

dize, or other commodities whatsoever, above the value of six pounds for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time," &c. It also directs, that persons by any corrupt bargain, &c. taking more, &c. shall forfeit and lose for every such offence the treble value of the monies, wares, merchandize, and other things so lent, bargained, sold, exchanged, or shifted, to be recovered to the use of the king and the party suing for the same, by "action of debt, bill, plaint, or information," but mentions not an indictment.

*The statute of 12 Ann. stat. 2, ch. 16, is framed in a similar manner, except as to the difference of interest, viz. it allows five pounds for the forbearance, &c. only.

[* 694]

It is laid down, ^a that if a statute prohibit any act to be done, and by a substantive clause gives a recovery by "action of debt, bill, plaint, or information," but mentions not an indictment, the party may be indicted on the prohibitory clause, and thereupon fined in any sum not exceeding the penalty; which, of course, is to be estreated to the king's use.

Observations.

But if the act be not prohibitory, that is to say, if it only enacts, that "if persons do such a thing, they shall forfeit so much," to be recovered by "action of debt, bill, plaint, or information," ^b they cannot be indicted for it, but the proceeding must be by *action, bill, plaint, or information.* (a) ^(a) But if it be also an offence at common law, vide 110, § 79, ante.

It evidently appears, that the statutes of *Charles* and *Anne*, before mentioned, are prohibitory, and yet it is reported that an indictment will not lie on the former, it having prescribed different methods of ^c proceeding. *Regina v. Dy, Easter 7 Ann. 11 Mod. 174.* ^d

After verdict for the king on an indictment for usury, it was moved in arrest of judgment, that the prosecutor had only laid a corrupt agreement, without any loan or taking excessive interest in pursuance thereof, and the judgment was arrested. *The King against Upton, Mich. 2 Geo. II. 2 Sira. 816.* The report in *Strange* does not shew whether the party was indicted on the statute, or at common law. See the first case in 5 *Bac. Abr. 419.*

[* 695]

Thus far has been inserted for the consideration of those who may be inclined to proceed by indictment, instead of the more usual method by action for the penalty: and as the ^e law in the former editions chiefly concerned the latter remedy, it has been omitted here for the purpose of giving place to more useful information relating to the business on the crown side.

^a 2 *H. H. 171.*

^b Yet it seems, that if the words "or otherwise" be added, it authorizes a prosecution by indictment. 2 *Harw. 211*; 3 *Bac. Abr. 97.*

^c Vide 132, 133, ante; *Castle's case, Cro. Jac. 643, 644*; and 5 *Bac. Abr. 417, 419.*

^d But it appears, that the party is punishable at common law, by fine and imprisonment. 5 *Bac. Abr. 419.*

^e For which, see 3 *Inst. ch. 70*; 5 *Bac. Abr. 405*; 5 *Com Dig. (tit. Usury)*; 2 *Black. Com. 455*; and 1 *Harw. (6th edit.) ch. 82*: the latter of which contains almost every determination on the subject. See also *Fitzroy v. Gwillim, 1 Term Rep. 153*; *Scott v. Brest, 2 Term Rep. 238*; and *Auriol v. Thomas, ibid. 52.*

PRECEDENTS of INDICTMENTS.

W I N D O W S.

Indictment for breaking the windows of a dwelling-house.

[* 696] *Middlesex.* **T**HE jurors for our lord the king upon their oath present, That *A. B.* late of the parish of *St. Leonard, Shoreditch*, in the county of *Middlesex*, labourer, on the first day of *March*, in the twentieth year of the reign of our sovereign lord *George* third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, the glass windows of the dwelling-house of *E. L.* there situate, maliciously, unlawfully, and injuriously did break and destroy, and other wrongs to the said *E. L.* then and there did, to the great damage of * the said *E. L.* and against the peace of our said lord the king, his crown and dignity.*

W O M E N.

Indictment of felony for taking a woman against her will, and marrying her, she having substance in moveable goods.

[* 697] *Middlesex.* **T**HE jurors for our lord the king upon their oath present, That *J. C.* late of the parish of *St. James*, within the liberty of *Westminster*, in the county of *Middlesex*, gentleman, *A. M.* late of the same, labourer, and *J. J.* late of the same, esquire, on the fourteenth day of *November*, in the twenty-first year of the reign of our sovereign lord *George* the third, king of *Great-Britain*, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one *M. W.* spinster, then and yet being under the age of fourteen years, and a maid, and only daughter and heir of *P. W.* esquire, then lately deceased, and she the said *M. W.* then and there having substance in moveable goods of the value of one thousand pounds, of lawful money of *Great-Britain*, and in lands and tenements of the value of fifteen hundred pounds by the year, of like lawful money, and in the peace of God and our said lord the king then and there being, violently did make an assault, and her the said *M.* then and there did put in great danger of her life, and her the said *M.* * with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, feloniously, and against the will of her the said *M.* violently did take, force, and convey away, with intention that he the said *J. C.* for lucre, and the sake of such her substance, feloniously should marry, and have the said *M.* to wife; and that the said *J. C.* afterwards, to wit, on the said fourteenth day of *November* in the year aforesaid, at the parish of *St. Margaret, Westminster*, in the county aforesaid, by the assent, consent, procurement, and abetment of the said *A. M.* *J. J.* and of *C.* the wife of *F. C.* late of the parish of *St. Margaret, Westminster*, aforesaid, in the county aforesaid, gentleman, and *W. C.* late of the same parish and county, clerk, with force and

a See another form in *Cro. Cir. Aff* 485.

If the offence had been committed in a riotous manner it should be so stated. *Vide doctrine under Riot, 630, ante.*

arms, at the parish last above-mentioned, in the county aforesaid, feloniously, and for lucre of the said substance of the said *M. W.* did marry, and had the same *M. W.* to wife, to the great displeasure of Almighty God, to the great disparagement of the said *M.* and the utter heaviness and discomfort of all her relations and friends, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said *A. M. J. J. C.* the wife of *F. C.* and *W. C.* on the said fourteenth day of *November*, in the year aforesaid, at the parish of *St. Margaret, Westminster*, aforesaid, in the said county of *Middlesex*, with force and arms, knowingly and feloniously were assisting, aiding, procuring, assenting, abetting, and maintaining the aforesaid *J. C.* in doing and committing the felony aforesaid, in manner and form aforesaid, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

* By stat. 3 *Hen. VII.* ch. 2, (reciting “where women, as well maidens as widows and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, for the lucre of such substances been oftentimes taken by mis-doers, contrary to their will, and after married to such mis-doers, or to other by their assent, or detoiled, to the great displeasure of God, and contrary to the king’s laws, and disparagements of the said women, and utter heaviness and discomfort of their friends, and to the evil example of all other;”) it is therefore ordained, established, and enacted, That what person or persons from henceforth that taketh any woman so against her will unlawfully, that is to say, maid, widow, or wife, that such taking, procuring, and abetting the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, be felony; and that such mis-doers, takers, and procurators to the same, and receivers, knowing the said offence in form aforesaid, be henceforth reputed and judged as principal felons: Provided alw y, that this act extend not to any person taking any woman, only claiming her as his ward or bond woman.”

[* 698]

By stat. 39 *Eliz.* ch. 9. § 1. Clergy is taken away from persons who shall offend against the above statute.

This act of Elizabeth extends only to those who shall be principals or procurors, or accessaries before such offence committed. § 2.

Note, It is a perpetual law, and no time limited to prosecute.

By stat. 4 & 5 *Ph. & M.* ch. 8. § 4, If any person, above the age of fourteen years, shall unlawfully take or convey, or cause to be taken or conveyed, any maid or woman child unmarried, being within the age of sixteen years, out of or from the possession, and against the will, of her father, mother, or guardian, * he shall suffer two years imprisonment, or pay such fine as shall be assessed by the court.

[* 699]

§ 4. If any person shall so take away, or cause to be taken away, and deflower any such maid or woman child, or shall, against the will or knowledge of the father, or, if he be dead, of the mother having tuition of such child, contract matrimony with her by secret letters, messages, or otherwise, he shall be imprisoned for five years, or pay such fine as shall be assessed by the court, half to the king, and half to the parties aggrieved.

PRECEDENTS OF INDICTMENTS.

§ 6. *And if any woman child or maiden, being above the age of twelve years, and under sixteen, shall consent or agree to such person so making such contract of matrimony, the next of kin to her shall have, hold, and enjoy her lands during the life of the person so contracting*

Women convicted of crimes for which men are entitled to the benefit of clergy may, upon prayer, be punished as men.^a 3 Will. & M. ch. 9, § 6.

Having once had the benefit of the statute, they are barred of it a second time by 4 & 5 Will. & M. ch. 24, § 13. Made perpetual by 6 & 7 Will. & M. ch. 14, § 1.

Vide Doctrine of Indictments, 102. § 41; Bastardy; Nuisance, prec. 3; Rape, ante; and stat. 26 Geo. II. ch. 33, commonly called the Marriage Act.

W R E C K.

Persons convicted of plundering ship-wrecked goods, &c. or of obstructing the escape of any person from a wreck, or of putting out false lights, shall suffer death as felons, without benefit of clergy. 26 Geo. II. ch. 19, § 1.^b

^a *Vide* page 426, *ante*, (n.)

^b *Indictment on this statute, found and tried in Herefordshire, for stealing from a ship wrecked in Wales, Cro. Cir. Ass. 510.*

CLERK OF ASSIZE'S Circuit Companion.

The Office of a Judge's Cryer on the Circuit.

At the Opening of the Court.

Oyez, three times. **M**Y lords the king's justices do strictly charge and command all manner of persons to keep silence whilst his majesty's commissions of assize and nisi prius, oyer and terminer, and general-gaol-delivery, for the county of *H.* are openly read, upon pain of imprisonment.

Essoigns.

Oyez. If any one will be essoigned in assize of novel disseisin, assize of *mortdancestor*, certificate of assize, in *b juris utrum*, or attaint, let him come forth, and he shall be heard.

Sheriff's Return.

Oyez. Sheriff of this county of *A.* return the several precepts and writs of assize and nisi prius to you directed, returnable here this day, that my lords the king's justices may proceed thereon.

* *Entry of Writs and Records.*

[* 702]

Oyez. All attornies and others that have any writ of assize, or records of nisi prius, or writs of the same, let him enter them with the marshal forthwith, that my lords the king's justices may proceed thereon (if ordered); otherwise, *ne recipiatur* will be entered.

Adjournment.

Oyez. All manner of persons that have any thing further to do before my lords the king's justices of assize and nisi prius, oyer and terminer, and general-gaol-delivery, for this county of *A.* (or city of *A.* and county of the same city or town of, &c.) may depart hence at this time, and give their attendance tomorrow morning at o'clock, or this afternoon at &c.

^a Vide page 10, ante.

^b Vide 3 Black. Com. 59, 252; 13 Edw. I. ch. 30.

Calling

The Clerk of Assize's

Calling of the Justices of the Peace and other Officers.

Oyez. All justices of the peace for this county of *A.* answer to your names, and save your fines.

But for *Yorkshire*, you say, East Riding, West Riding, or North Riding.

Oyez. All mayors of corporations and boroughs within this county, answer to your names, and save your fines.

Oyez. All coroners of our sovereign lord the king for this county answer to your names, and save your fines.

Oyez. All stewards of leets and liberties within this county, answer to your names, and save your fines.

[* 703]

**Oyez.* All chief constables of hundreds and liberties within this county, answer to your names, and save your fines.

Oyez. All bailiffs of hundreds and liberties within this county answer to your names, and save your fines.

Calling the Grand Jury.

Oyez. You good men that are returned to enquire for our sovereign lord the king and the body of this county of *A.* answer to your names, and save your fines.

Then the cryer calls them by their names with their addition, and if any one does not appear upon second calling, he says, Or you lose one hundred shillings issue.

Then the marshal or cryer swears them, and makes this proclamation, *viz.*

Oyez. My lords the king's justices do strictly charge and command all manner of persons to keep silence whilst his majesty's proclamation against profaneness and immorality be openly read, upon pain of imprisonment.

The Foreman of the Grand Jury's Oath.

You as foreman of this grand inquest for the body of this county of *A.* shall diligently enquire, and true presentment make of all such matters and things as shall be given you in charge: the king's council, your fellows, and your own, you shall keep secret; you shall present no one for envy, hatred, or malice; neither shall you leave any one unrepresented for fear, favour, or affection, reward or hope thereof; but you shall present all things truly as they come to your knowledge, * according to the best of your understanding: so help you God.

[* 704]

Oath of the Rest of the Grand Jury.

The same oath your foreman hath taken on his part, you and every of you shall observe and keep on your part: so help you God.

Proclamation before the Charge given.

Oyez. My lords the king's justices do strictly charge and command all manner of persons to keep silence whilst the charge is given to the grand inquest, upon pain of imprisonment.

Justices

CIRCUIT COMPANION.

Justices, &c. to deliver Recognizances.

Oyez. All justices of the peace, mayors, coroners, stewards of leets and liberties, and other officers that have taken any inquisition or recognizance, let them deliver them into court forthwith, that my lords the king's justices may proceed thereon.

To prefer Indictments.

Oyez. All manner of persons that are bound by recognizance to prefer any bills of indictment against any prisoners in the gaol of this county, or others, let them come forth and prosecute, or they will forfeit their recognizance; (or go to the clerk of indictments lodgings, &c.)

Calling Prosecutors.

A. B. come forth and prosecute, and give evidence against *E. D.* or you forfeit your recognizance.

** Calling Persons out upon Bail.*

[* 705]

A. B. of the parish of, &c. come forth, save you and your bail, or you forfeit your recognizance.

Calling Bail to bring forth Principals.

A. B. and *C. D.* (with their additions) bring forth the body of *E. E.* whom you have undertaken to appear here this day, or you forfeit your recognizance.

Calling Common Jury.

Oyez. You good men that are impanelled to enquire between our sovereign lord the king and the prisoners at the bar (if by adjournment), and were adjourned to this time and place, answer to your names, and save your fines.

Information for the King against the Prisoner.

Oyez. If any one can inform my lords the king's justices, sergeant, or attorney-general, before this inquest be now taken between our sovereign lord the king and the prisoner at the bar, of any treasons, murders, felonies, or other misdemeanors committed or done by the prisoners at the bar, let him come forth, and he shall be heard; for they now stand at the bar for their deliverance. And all others that are bound by recognizance to give evidence against the prisoners at the bar, let them come forth, and give their evidence, or else they forfeit their recognizance.

** Proclamation before Judgment given.*

[* 706]

Oyez. My lords the king's justices do strictly charge and command all manner of persons to keep silence, whilst sentence of death is passing against the prisoner at the bar, upon pain of imprisonment.

To

Justice

The Clerk of Assize's

To discharge Recognizance.

Oyez. If any one can aught say why *A. B.* should stand any longer bound, let them come forth, and they shall be heard; otherwise the court does discharge him, paying his fees.

General Adjournment.

Oyez. All manner of persons that have any thing further to do before my lords the king's justices of assize and nisi prius, oyer and terminer, and general gaol-delivery for this county of *B.* may depart hence at this time, and give their attendance here again at o'clock, &c. or at my lords' lodgings, or in the other court, as it shall happen.

Oath of High Constables upon Presentment.

You shall swear that such of these presentments as are your own are true, and such as you received from the hands of the petty-constables are as you received them, without alteration.

Oath of Jury of Life and Death.

[* 707]

You shall well and truly try, and true deliverance make, between our sovereign lord the king, * and the prisoner at the bar, whom you shall have in charge, and a true verdict give, according to your evidence: so help you God.

Oath upon a Traverse tried.

You shall well and truly try the issue of this traverse between our sovereign lord the king and *A. B.* and a true verdict give, according to your evidence: so help you God.

The Matron's Oath.

You, as forematron of this jury, shall swear, that you will search and try the prisoner at the bar, whether she be with child of a quick child, and thereof a true verdict give, according to your skill and understanding: so help you God.

One by one.

The same oath your forematron hath taken on her part you shall well and truly observe and keep on your part: so help you God.

Swearing Crown Witnesses.

The evidence you shall give to the court and jury sworn, between our sovereign lord the king and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth: so help you God.

Swearing Witnesses upon a Traverse.

[* 708]

The evidence you shall give to the court and jury sworn, touching the issue of this traverse, * shall be the truth, the whole truth, and nothing but the truth: so help you God.

Swearing

CIRCUIT COMPANION.

Swearing Bailiff to attend the Grand Jury.

You shall swear that you will diligently attend the grand inquest during the assizes, and carefully deliver to them all such bills of indictments, or other things, as shall be sent them by the court without alteration: so help you God.

The Oath of a Bailiff, when any goes out.

You shall swear you will keep every person sworn of this jury together in some private and convenient place, without drink, lodging, or fire (candle excepted;) you shall not suffer any person to speak to them yourself, unless it be to ask them whether they are agreed upon their verdict, without leave of the court: so help you God.

A Proclamation for Silence to proceed to Business.

Oyez. My lords the king's justices do strictly charge and command all manner of persons to keep silence, for they will now proceed to the pleas of the crown, and arraignment of prisoners, upon their lives and deaths; and all those that are bound by recognizance to give evidence against any of the prisoners which shall be at the bar, let them come forth, and give their evidence, or they will forfeit their recognizance.

* N I S I P R I U S .

[* 709]

Oyez. **A**LL manner of persons that have any thing further to do before my lords justices of assize and nisi prius, oyer and terminer, and general gaol-delivery for the county of *A.* draw near and give your attendance.

Calling Nisi Prius Jury.

Oyez. You good men of nisi prius summoned to appear here this day, and try this issue between *A. B.* plaintiff, and *C. D.* defendant, answer to your names, and save your issue (if ordered), or you lose a mark in issues.

If there be not a full jury, say, You have no inquest, who prays a tales.

Then call the defendant three Times, thus:

A. B. Come forth, or this inquest shall be taken by your default.

Then swear the Jury.

You shall well and truly try the issue of this nisi prius between the parties, according to your evidence: so help you God.

Nisi Prius Evidence.

The evidence you shall give to the court and jury sworn, touching the issue of this nisi prius, shall be the truth, the whole truth, and nothing but the truth: so help you God.

When

The Clerk of Assize's

[* 710] * *When the jury is agreed upon their Verdict, call the Plaintiff three Times, thus :*

A. B. come forth, or you lose your writ of nisi prius.

If the Defendant in Ejectment confess Lease, Entry, and Ouster, then call the Plaintiff three Times, thus :

A. B. come forth in your proper person. or by your attorney, and confess lease, entry, and ouster, forthwith.

Upon Information tried, this Proclamation.

Oyez. If any one can inform my lords the king's justices, the king's serjeant, or attorney-general, before this inquest be taken between our sovereign lord the king and *A. B.* of any misdemeanor committed or done, let him come forth, and he shall be heard.

If a Writ of Right.

You good men of a writ of right, summoned to appear here this day, and try the issue between *A. B.* tenant, answer to your names, and save your issues.

Calling an Assize.

You good men recognitors impannelled to try the matter of this assize, answer to your names, and save your fines.

A. B. tenant, come forth, or this assize will be taken by your default.

[* 711]

* *Oath of the Jury.*

You shall well and truly try the matter of this assize between the parties according to your evidence : so help you God.

You good men recognitors in this assize, that have appeared, may depart at this time, and give your attendance, &c.

All manner of persons that are concerned in the assize of novel disseisin, between *A. D.* demander, and *C. D.* tenant of a freehold, tenant in *B.* in this county, and were adjourned over to this house, draw near, and give your attendance.

Oath to Witnesses upon Indictment.

The evidence you shall give to the grand inquest upon this bill of indictment against *A. B.* shall be the truth, the whole truth, and nothing but the truth : so help you God.

Jur. in Cur. is to be wrote on the back of the indictment.

The Quakers Affirmation.

I *A. B.* do solemnly and sincerely declare, that the evidence I shall give to the court, and the jury sworn, touching the matter in question, shall be the truth, the whole truth, and nothing but the truth : so help me God.

At Lancaster, instead of a commission, it is called his majesty's letters patent.

In the counties *palatine*, instead of assize and nisi prius, it is assize and court of pleas.

S H E R I F F ' s

* S H E R I F F ' s

[* 712]

Business at the Assizes.

THE sheriff attends at the assizes to wait upon the judges from their lodgings to the court and back again; returns the venire, habeas corpora, distringas, and other process, returns talesmen, receives the calendar from the clerk of the assize, and sees that the several judgments pronounced by the court in criminal cases are duly put in execution.

The Sheriff usually takes the following Fees.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For returning every venire, - - -	0	2	6
For returning every habeas corpus, or distringas, - - -	0	12	0
For attending the striking a special jury, and making out warrants for summoning them, - - -	2	2	0
For returning a tales, - - -	0	2	0
For attending a view, and returning the same of each party, - - -	1	1	0
Each day, - - -	2	2	0
For returning the venire on the crown side, - - -	0	12	0
For summoning every person on the process, returnable in the said court, after an indictment found, or for taking them on the capias, so that they be and appear at the assizes, - - -	0	2	0
For summoning or distraining a parish, hundred, or county, on the process, returnable in the said courts, after an indictment found, so that they be and appear at the assizes, - - -	0	4	0

* C O R O N E R S

[* 713]

Business at the Assizes.

THE coroners are to attend the assizes, and to deliver to the clerk of the assizes all inquisitions of murder and manslaughter, and also all inquisitions of felo de se, and all inquisitions where any Deodands are found, in order that the clerk of the assizes may transmit them to his majesty's coroner and attorney of his majesty's court of *King's Bench*, to the end that process may be brought in the Deodand; they are likewise to attend to return the venire, habeas corpora, distringas, and other process, where the sheriff is related to either party, or interested in the suit.

The Fees usually taken by the Coroners are as follow.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For returning every venire facias, - - -	0	2	6
For returning every habeas corpora, or distringas, - - -	0	12	0
For returning a tales, - - -	0	2	0

An

THE HISTORY OF THE UNITED STATES

The history of the United States is a subject of great interest and importance. It is a subject which has attracted the attention of the world, and which has been the subject of many books and papers. The history of the United States is a story of growth and development, of struggle and triumph. It is a story which has inspired the hearts of many people, and which has shown the world the power of a united people.

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* *An^a Account of the Fees taken in the Circuits by the Judges, Marshals, Associates, Clerks of Assize, &c. presented by the several Officers to the House of Commons, pursuant to their Order of the 23d of March, 1729.* [* 715]

Nisi Prius Side.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
ENTERING every cause for trial 11s. 8d. thus divided, viz. Judge 6s. 8d. Clerk of Assize 2s. Marshal 2s. Cryer 1s.	-	-	-
Calling the cause	-	-	-
Tales	-	-	-
Default	-	-	-
For a warrant of attorney in causes where the sworn attorney on record for plaintiff or defendant does not appear	-	-	-
Challenge of the jury by plaintiff or defendant	-	-	-
A cause referred, each party	-	-	-
A juror withdrawn, each party	-	-	-
Confession of lease, entry, and ouster, in ejectment	-	-	-
For a private verdict the Marshal receives 1l. 3s. 8d. which is thus divided, viz. to the Judge 6s. 8d. Clerk of Assize 2s. Marshal 3s. Cryer 2s. Steward 2s. Clerk 2s. Butler 2s. Porter 2s.	-	-	-
Nonsuit or defendant's verdict	-	-	-
Every record withdrawn	-	-	-
Every <i>ne recipiatur</i>	-	-	-

In the *Crown-Office*, *Exchequer*, and *Qui tam* causes, double fees are taken (except the private verdicts.)

Crown Side.

Entering every traverse 15s. 8d. thus divided, Judge 6s. 8d. Clerk of Assize 2s. Marshal 6s. Cryer 1s.	-	-	-
Calling	-	-	-
Each defendant not guilty	-	-	-
Every recognizance entered into, respited, or discharged	-	-	-
Every submission to a fine	-	-	-
Every person acquitted or discharged by proclamation	-	-	-
* For a special pardon pleaded	-	-	-
A general pardon pleaded	-	-	-

In the Counties Palatine of Durham and Lancaster.

Entering every <i>Exchequer</i> or <i>Crown-Office</i> record 1l. 5s. thus divided, viz. Judge 13s. 4d. Marshal 9s. 8d. Cryer 2s.	-	-	-
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^a The Editor, not having it in his power to examine the original, can only say, that this part of the work has been accurately copied from the fifth edition.

The CLERK of ASSIZES

	l.	s.	d.
Calling tales and default, each	0	4	0
Every <i>habeas corpora</i> , or <i>distringas juratores</i>	0	4	0
Entering every county palatine cause	0	2	0
Every affidavit sworn in court	0	2	0
Every recovery suffered with double voucher 13s. 4d. thus divided, Judge 6s. 8d. Marshal 6s. 8d.	0	13	4
Every voucher more to Marshal	0	3	0

Fees in the Crown Side in the Counties Palatine aforesaid.

Every not-guilty recognizance entered into, respited, or discharged; submission to a fine; or person discharged by proclamation	0	5	0
All other fees the same as before mentioned.			
At a maiden affizes the Marshal receives of the Judge's Steward 4s. for gloves, and his servant 1s. 6d.	0	5	6

Fees taken by the Cryers to the Judges in Circuits.

On the Nisi Prius Side.

EVERY cause entered (received of the Marshal)	0	1	0
Calling the cause, tales, and default, each	0	2	0
Challenge of the jury by plaintiff or defendant	0	2	0
Calling in ejectment to confess lease, entry, and ouster	0	2	0
Every witness sworn on a <i>voyer dire</i>	0	2	0
Every witness sworn to give evidence	0	0	4
Swearing an interpreter, each side	0	2	0
Nonsuit or defendant's verdict	0	2	0
Every cause referred, each side	0	1	0
Withdrawing a juror, each side	0	1	0
Received of the Marshal for every private verdict	0	2	0
In <i>Crown-Office</i> , <i>Exchequer</i> , and <i>Qui tam</i> causes, double fees are taken, and in a <i>Crown-Office</i> cause the Cryer takes for proclamation for information	0	4	0

[* 717]

* *The Counties Palatine of Durham and Lancaster.*

Every recovery suffered at bar	0	4	0
Calling defendants to appear in writs of dower, and all real actions	0	2	0
Every Attorney or Solicitor in the counties palatine appearing, pays	0	1	0
All other fees the same as in other places.			

Crown Side.

Swearing every witness to a bill of indictment	0	0	4
Swearing witnesses in court for the king	0	0	0
Swearing every witness for the person indicted	0	0	4
Calling a traverse	0	4	0
Proclamation for information	0	2	0
Every not-guilty	0	2	0
Entry of every traverse (received of the Marshal)	0	1	0
Discharge of every person by proclamation	0	2	0
Every recognizance entered into, respited, or discharged, and every submission to a fine, each	0	2	0

For

CIRCUIT COMPANION.

				<i>l.</i>	<i>s.</i>	<i>d.</i>
For a special pardon pleaded	-	-	-	1	0	0
A general pardon pleaded	-	-	-	0	2	0

The Counties Palatine aforesaid.

Every recognizance entered into, respited, or discharged; every submission to a fine; every not-guilty; and person discharged by proclamation, each	-	-	-	0	5	0
All other fees the same as in other places.						
Every Justice of the Peace gives to the glove when he appears						
Every Mayor or Bailiff of a corporation or borough appearing, gives						
Every Coroner appearing, gives						
The Sheriffs of <i>York</i> and <i>Devon</i> , and the Sheriffs in the Home Circuit, usually pay the cryer on the crown side for opening the court	-	-	-	1	1	0
Sheriffs of other counties usually	-	-	-	0	10	6
At a maiden affizes the cryer receives of the Judge's Steward for gloves	-	-	-	0	4	0
The Judge's Bailiff for attending and keeping the Jury together at <i>York</i>	-	-	-	0	2	6
In all other counties	-	-	-	0	2	0

Fees claimed by the Judge's Clerks and Stewards, in the Circuit. [* 718]

King's Bench.

DYE-LAWS of a corporation allowed in the circuit,						
to the Judge 5 <i>l.</i> to the Clerk 3 <i>l.</i>	-	-	-	8	0	0
Every <i>habeas corpus</i> , to the Clerk	-	-	-	0	4	0
Every petition presented, to the Clerk	-	-	-	0	2	6
Petition from a prisoner	-	-	-	0	0	0
A summons, an order, and affidavit, each to the Clerk	-	-	-	0	0	0
Attendance by counsel at the Judge's lodgings, each side to the Clerk	-	-	-	0	5	0
An order on such attendance, to the Clerk	-	-	-	0	2	6
Every fine acknowledged, admission by guardian, a warrant of attorney in a recovery, each to the Judge 6 <i>s.</i>						
8 <i>d.</i> to the Clerk 5 <i>s.</i> Porter 4 <i>d.</i>	-	-	-	0	12	0
Judge's certificate in battery, &c. and public verdict, when the court is adjourned to the lodging, and recognizance, each to the Clerk	-	-	-	0	2	0
Every private verdict (received of the Marshal), to the Clerk 2 <i>s.</i> Steward 2 <i>s.</i>	-	-	-	0	4	0
Juries and recoveries at <i>Lancaster</i> , each to the Judge 13 <i>s.</i>						
4 <i>d.</i> Clerk 5 <i>s.</i>	-	-	-	0	18	4
at <i>Durham</i> , to the Judge 6 <i>s.</i> 8 <i>d.</i> Clerk 5 <i>s.</i>	-	-	-	0	11	8
At a maiden affizes the Steward receives of the Sheriff for glove money 4 <i>l.</i> whereof 10 <i>s.</i> is paid each Judge, and the rest is divided among the officers and servants				4	0	0

The CLERK of ASSIZE's

Fees now taken by the Clerk of the Assize for the Home Circuit, and his Officers.

On the Crown Side.

	l.	s.	d.
F OR every prisoner discharged by proclamation, or acquitted of felony, Clerk of Assize -	0	8	4
For every prisoner convict burnt in the hand, or whipped, Clerk of Assize -	0	4	8
For discharging or taking every recognizance to answer, Clerk of Assize -	0	6	8
For a copy of every indictment in felony, with the caption of the court, and the names of the Grand Jury, Clerk of Assize -	0	13	4
[* 719] * For pleading every pardon and allowance, Clerk of Assize	0	13	4
And gloves on a special pardon to each officer.			
For enrolling the pardon, and copy for every sheet, Clerk of Assize -	0	1	4
For allowance and return of a <i>certiorari</i> in felony, Clerk of Assize -	0	13	4
For allowance of a <i>certiorari</i> in trespasss, Clerk of Assize	0	6	8
More for every name after the first -	0	2	0
For the return thereof, Clerk of Assize -	0	2	0
For a copy of every indictment not exceeding five sheets, Clerk of Assize -	0	3	4
For every sheet above five, Clerk of Assize -	0	0	8
For every person's appearing, plea of not guilty, recognizance, and entering the issue in trespasss, Clerk of Assize	0	12	10
For drawing, entering, and copying of issues, records of conviction and acquittal, for every sheet, Clerk of Assize	0	1	4
For making and discharging every process, Clerk of Assize	0	2	6
For every conviction or acquittal in trespasss, Clerk of Assize 10s. Clerk of Arraignment 2s. -	0	12	0
For the <i>venire</i> , Clerk of Assize -	0	2	6
For every writ or order of restitution, Clerk of Assize	0	6	8
For the allowance of a writ of <i>noli prosequi</i> from the Attorney General, for every person, Clerk of Assize	0	13	4
For a certificate that a person is indicted, Clerk of Assize 2s. Clerk of Arraignment 1s. -	0	3	0
<i>Memorandum</i> , the fee of 13s. 4d. for the copy of every indictment in felony, with the caption of the court, &c. and the fees relating to a pardon, <i>certiorari</i> , writ of restitution, and <i>noli prosequi</i> , very rarely happen.			
For a submission of, or <i>cessat processus</i> , against inhabitants, including appearance and copy, Clerk of Assize,	0	15	4
For a single person, Clerk of Assize -	0	13	4
For an <i>habeas corpus</i> , the two writs, one to deliver, and the other to receive, Clerk of Assize 4s. Clerk of Arraignment 1s. -	0	5	0
For respiting of every recognizance to answer, Clerk of Assize -	0	6	4
For recording every <i>ignoramus</i> in felony, Clerk of Assize	0	6	4
[* 720] * For every search of the books and records, Clerk of Arraignment -	0	1	0
For every <i>exhibit</i> , Clerk of Arraignment -	0	1	0

CIRCUIT COMPANION.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every <i>subpœna</i> to testify, Clerk of Assize 2s. Clerk of Arraignment 6d.	-	0	2 6
For every ticket thereupon, Clerk of Arraignment	-	0	0 4
For every order, Clerk of Assize 2s. of Arraignment 3s.	0	5	0
For every certificate for a reward by act of Parliament, Clerk of Assize 4s. of Arraignment 1s.	-	0	5 0
For swearing every High Constable upon his presentments in <i>Kent</i> , Clerk of Arraignment	-	0	0 6

Fees upon information, which very seldom are brought.

For filing every information, Clerk of Assize	-	0	6 8
<i>Subpœna</i> thereupon, Clerk of Assize	-	0	2 6
Defendant's appearance thereupon, Clerk of Assize	0	4	0
Every plea of not guilty, Clerk of Assize	-	0	2 0
Every other plea, according to the length, Clerk of Assize	0	1	0
For entering judgment, either for the informer or the defendant, Clerk of Assize	-	0	6 8
Every <i>fieri facias</i> , Clerk of Assize	-	0	3 6

Fees on a Demurrer, which very seldom happen.

For allowing and filing every demurrer and copy, Clerk of Assize	-	0	13 4
Joining in demurrer for the King, Clerk of Assize	0	6	8
Replying to the rejoinder, Clerk of Assize	-	0	6 8

On the Nisi Prius.

For entering every record, taken by the Marshal, and accounted for to the Clerk of Assize	-	0	2 0
If the attorney appear not, then for the warrant of attorney, Clerk of Assize	-	0	0 8
For calling of every cause, Clerk of Assize 1s. Associate 1s.	-	0	2 0
For reading the issue, Associate	-	0	2 0
Every issue after the first, Associate	-	0	1 0
For every default, <i>tales</i> , and <i>posse</i> , Clerk of Assize	0	2	0
Each privy verdict, nonsuit, or defendant's verdict, Clerk of Assize 2s. Associate 2s.	-	0	4 0
* For every name after the first in a defendant's verdict, Associate	-	0	2 0
For every challenge, Clerk of Assize 1s. Associate 1s.	0	2	0
If the challenge be tried by verdict, Clerk of Assize 2s. Associate 2s.	-	0	4 0
For drawing every special verdict at the equal charges of plaintiff and defendant, for every sheet, Clerk of Assize	0	1	0
For engrossing it, for every sheet, Clerk of Assize	0	1	0
For a copy of it, for every sheet, Associate	-	0	0 8
For every <i>subpœna</i> , Clerk of Assize 2s. Associate 6d.	0	2	6
For reading an evidence, Associate	-	0	1 0
For the endorsing the certificate of batteries being proved, &c. on the record, Associate	-	0	2 0
For the notes of every special verdict, each side, Clerk of Assize 3s. 4d. Associate 3s. 4d.	-	0	6 8
The copy thereof, each side, Associate	-	0	3 4

[* 721]

For

The Clerk of Assize's

For withdrawing a juror, minutes, and draughts of an l. s. d.
order, two copies thereof, and two copies of the jury,
if for a view on each side, Clerk of Assize 3s. 9d. Af-
sociate 3s. 9d. - - - - - 0 7 6

To the Clerks of Indictments.

For drawing every indictment in felony - - - 2 0
In trespass - - - - - 0 3 4
If special, per sheet - - - - - 0 0 8
Engrossing every sheet - - - - - 0 0 4
Paid by the sheriff of each county for copy of the
calendar - - - - - 0 7 6
Paid by the gaoler of the county of Surry for the copy of
the calendar - - - - - 0 7 6
And by the gaolers of each of the other counties 0 5 0
The Clerk of Assize's man hath for every bill of indict-
ment he delivers to the gentlemen of the Grand Jury 0 0 4
Allowed and paid by the Clerk of Assize to the Clerk of
the Arraignment (his fees being inconsiderable) for every
circuit, for his trouble and attendance - 10 0 0

[* 722] * The Clerk of the Assize's in the *Midland Circuit*, with the Fees
of the Clerk of Arraignment on the Crown Side.

Fees upon Bills, or Presentments in Trespass or Misdemeanor.

FOR the appearance of every defendant, Clerk of
Assize - - - - - 0 7 4
Copy, for the first name, Clerk of Assize - 0 6 8
For every other name, if more than one - 0 2 8
For entering the plea of every defendant, Clerk of Assize 0 5 4
For the process, every Assize it is made out, Clerk of
Assize 1s. Clerk of Arraignment 1s. - - - 0 2 0
For drawing up the record upon a traverse, *per sheet*,
Clerk of Assize 8d. Clerk of Arraignment 4d. - 0 1 0
Engrossing it, *per sheet*, Clerk of Assize 8d. of Arraignment
4d. - - - - - 0 1 0
Copy, *per sheet*, Clerk of Assize 4d. of Arraignment 4d. 0 0 8
Venire facias, upon a traverse, Clerk of Assize 4s. 4d. of
Arraignment 1s. - - - - - 0 5 4
At the trial of a traverse; for calling, Clerk of Assize 0 2 0
Reading the record, Clerk of Assize 1s. of Arraignment 1s. 0 2 0
Proclamation, Clerk of Arraignment - - - 0 1 0
Reading every exhibit, or written evidence, Clerk of Ar-
raignment - - - - - 0 1 0
For the acquittal or entering judgment, for every defend-
ant, if not guilty, Clerk of Assize - - - 0 6 8
For the discharge of every recognizance to answer, besides
4s. usually taken by the Clerk of Assize for the Marshal
and Cryer, Clerk of Assize 1s. 4d. Clerk of Arraignment
6s. - - - - - 0 7 4
For taking a recognizance to answer, besides 4s. for the
Marshal and Cryer, Clerk of Assize 4s. 4d. Clerk of
Arraignment 1s. - - - - - 0 5 4

a Vide 10 & 11 Will. III. ch. 23, § 7, 8.

For

CIRCUIT COMPANION.

s. d.	For the discharging of every indictment upon the presentment-book, upon a submission, or stay of Process, viz. for appearance 7s. 4. Copy 6s. 8d. Plea 5s. 5d. Total,	l. s. d.
7 6	Clerk of Assize 16s. 4d. Clerk of Arraignment 3s.	0 19 4
	For every Order of Court, each side, Clerk of Assize 4s. 8d. of Arraignment 2s.	0 6 8
2 0	For a search of the books or records, Clerk of Assize	0 1 0

* Gaol Fees, the whole belonging to the Clerk of Assize.

[* 723]

3 4	Of every prisoner tried and acquitted, for every acquittal, besides the fee for his discharge	0 13 4
0 8	For the discharge of every prisoner	0 13 4
0 4	Of every prisoner tried and convicted, and burnt in the hand, or whipped, for his discharge	0 13 4
7 6	Recording a bill of ignoramus	0 6 8
5 0	Of every prisoner tried for murder, and acquitted, or found guilty of manslaughter only, for every acquittal, besides his discharge	0 14 4
0 4	Of the sheriff of every county, the calendar fee	2 5 0
0 0	Of every city or town where an assize is held	0 6 8
e Fees	Of the sheriffs of the city of Lincoln	1 1 0
	Of the gaoler of Northampton, for his calendar	1 10 0
	Of the gaoler of the castle of Lincoln, for his calendar	1 1 0
or.	Of the gaoler of Leicestershire, for his calendar	0 14 4
7 4	Of the gaoler of the borough of Leicester, for his calendar	0 6 8
6 8	For a writ of restitution, or writ of privilege and protection	0 8 0
2 8	For a habeas corpus	0 5 4
5 4	For a subpoena	0 2 6
2 0	For the return of a certiorari	0 13 4
1 0	For a fieri facias, or writ of execution	0 6 8
1 0	For a copy of an indictment for felony	0 13 4
0 8	For pleading and allowing a pardon	0 16 8
5 4	To the Clerk of Arraignment for reading the pardon	0 2 6
2 0	For filing an information or appeal	0 6 8
2 0	Other fees the same as in traverses.	
1 0	For drawing up records on indictments for felony, if called for (which they seldom are) the like fees as for drawing up traverses	
0 8	Usually paid to the Clerk of Assize's sumpter-man, for carrying a bill to be sworn to, and afterwards to the Grand Jury.	0 0 4

Fees for Indictments.

1 0	For drawing a common indictment	0 2 0
6 8	For drawing a special indictment	0 3 4
	If more than five sheets, for drawing every sheet	0 0 8

* A Table of Fees taken by the Associate, for the Clerk of Assize and himself, in all Nisi Prius Causes on the Midland Circuit. [* 724]

7 4	FOR calling every cause, Clerk of Assize	0 2 0
5 4	Reading every record, Associate	0 2 0
	For every defendant's default, Clerk of Assize	0 2 0

a Vide 10 & 11 Will. III. ch. 23, § 7, 8.

For

Every

The Clerk of Assize's

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Every <i>tales de circumstantibus</i> , Clerk of Assize	0	2	0
For every plaintiff's verdict, Clerk of Assize 1s. Associate 1s.	0	2	0
For every nonsuit or defendant's verdict, Clerk of Assize 3s. 4d. Associate 8d.	0	4	0
Drawing up every rule or order of court, and copy for each party, each party pays 6s. Clerk of Assize 4s. Associate 8s.	0	18	0
For taking accounts, or notes in court, Associate	0	2	0
For drawing every certificate, signed by the Judge in court, Clerk of Assize 3s. Associate 3s.	0	6	0
For marking the pannel in ejectment when the plaintiff is nonsuit, for want of defendant's appearing to confess, &c. Associate	0	2	0
For every challenge to the poll, each party challenging pays Associate	0	2	0
Challenge to the array, Associate	0	4	0
If drawn by the Associate, more	0	4	0
For other pleadings thereon, drawing <i>per sheet</i> 1s. engrossing 1s. copy, each party 8d.	0	2	8
Every exhibit read in court, Associate	0	1	0
Every private verdict, Clerk of Assize 2s. 4d. Associate 4s. 4d.	0	6	8
For recording special verdict, Associate	0	2	0
Copy of the notes of a special verdict, or special case, each party pays to Associate	0	3	6
For drawing special verdict <i>per sheet</i> 1s. engrossing <i>per sheet</i> 1s. copy for each party 8d. <i>per sheet</i>	0	3	4
Total Clerk of Assize 2s. 4d. Associate 1s. <i>per sheet</i>	0	3	4
For every <i>poslea</i> , Clerk of Assize 1s. 6d. Associate 6d.	0	2	0
If more than one issue returned, then for every issue after the first, Associate	0	2	0
Every juror withdrawn, each party pays 2s. Clerk of Assize 1s. Associate 3s.	0	6	0
Copy of every jury, Associate	0	2	0
Every cause in the <i>Exchequer</i> pays for reading <i>mittimus</i> or commission, Associate	0	2	0
* Endorsing what is found on an issue directed out of any court of equity, Associate	0	2	0
For every warrant of attorney, Associate	0	0	8
Copy of the verdict endorsed on the pannel, Associate	0	2	0
For every not guilty, upon an information at the suit of the King, Clerk of Assize 3s. 4d. Associate 2s.	0	5	4
For taking a verdict by adjournment at the Crown Court or at the Judge's lodgings, Associate	0	3	4
Attending the Judge or the court with a <i>poslea</i> , Associate	0	6	8
For copy of any <i>nisi prius</i> record, <i>per sheet</i> 8d. Associate 8d.	0	1	4
For reading Attorney-General's warrant for tales, Associate	0	2	0
For every proclamation at the suit of the King, Associate	0	2	0
For entering every cause 2s. and for every private verdict 2s. which the Judge's Marshal receives for the Clerk of Assize	0	4	0

CIRCUIT COMPANION.

A Table of Fees taken by the Clerk of the Assizes for the *Norfolk* Circuit, together with the Clerk of the Arraignment on the gaol side.

FOR drawing every indictment in felony, Clerk of l. s. d.	
Arraignment	2 0
If for murder or robbery, Clerk of Arraignment	3 4
If long, according to the length, <i>per sheet</i> , Clerk of Arraignment	0 0 8
For every indictment in trespass, how short soever	0 3 4
If long, according to the length, Clerk of Arraignment, <i>per sheet</i>	0 0 8
For entering every appearance to an indictment in trespass against one person, Clerk of Assize	0 7 0
If more than one name, for every other name, Clerk of Assize	0 4 0
For the copy of the indictment, for the first name, Clerk of Assize	0 6 8
For every other name	0 2 0
For entering every plea of not guilty in trespass, Clerk of Assize	0 5 4
For the process sent out upon every indictment, Clerk of Assize	0 2 0
For joining issue thereupon, for the King, Clerk of Assize	0 6 8
For drawing every traverse at issue, <i>per sheet</i> , Clerk of Assize	0 1 0
For engrossing it on parchment on record, <i>per sheet</i> , Clerk of Assize	0 1 0
For the copy to be delivered to the party indicted, <i>per sheet</i> , Clerk of Arraignment	0 0 8
For examining it, and the Clerk of Assize's hand to it	0 6 8
For every <i>venir' fac' jur'</i> Clerk of Assize 4s. of Arraignment 1s. 4d.	0 5 4
For every <i>subpana</i> , Clerk of Arraignment	0 2 6
For entering every confession, Clerk of Arraignment 2s. 8d. Clerk of Assize 4s.	0 6 8
For entering every acquittal and discharge, Clerk of Assize	0 6 8
For allowing and filing every demurrer and copy, Clerk of Assize 10s. Clerk of Arraignment 3s. 4d.	0 13 4
For joining in demurrer, for the King, Clerk of Assize	0 6 8
For replying to the rejoinder, Clerk of Assize	0 6 8
For discharging an indictment by motion for insufficiency, Clerk of Assize	0 7 4
For every writ of privilege, warrant of good behaviour, and writ of restitution, Clerk of Assize 4s. 4d. Clerk of Arraignment 2s.	0 6 8
For making and signing every special warrant, Clerk of Assize	0 6 8
For drawing, copying, entering, and signing every order on the common side, Clerk of Assize 4s. 8d. Clerk of Arraignment 2s.	0 6 8
For examining every record on the gaol side, and the Clerk of the Assize's hand to it, Clerk of Assize	0 6 8
For allowing <i>certiorari</i> in trespass, Clerk of Assize	0 6 8

[* 726]

^a Vide 10 & 11 Will. III. ch. 23, § 7, 8.

For

The Clerk of Assize's

	l.	s.	d.
For the return, for every name, Clerk of Assize	0	2	0
If in felony or treason, Clerk of Assize	0	13	4
The like fees for allowing a <i>certiorari</i> to remove an order			
For certifying thereof, if it be not a record of conviction,			
Clerk of Assize	0	6	8
If it be a record of conviction, then for every sheet, Clerk			
of Assize	0	1	0
[* 727] * For every discharge for an indictment upon a certificate,			
Clerk of Assize	0	6	8
For every <i>habeas corpus</i> , Clerk of Arraignment	0	5	0
For every certificate of a person being indicted, Clerk of			
Assize 4s. 8d. Clerk of Arraignment 2s.	0	6	8
If ten persons are indicted, no more than one issue is			
drawn up			
For pleading and allowing every special pardon, Clerk of			
Assize	5	0	0
For taking a recognizance in Court to answer, Clerk of			
Assize 4s. of Arraignment 4s.	0	8	0
For every discharge of such recognizance, Clerk of			
Assize 10s. of Arraignment 4s. 8d.	0	14	8
For the discharge of every prisoner in gaol, Clerk of			
Assize 10s. of Arraignment 4s. 8d.	0	14	8
And if by proclamation, more, Clerk of Assize	0	1	0
For every one that hath his pardon allowed, Clerk of			
Assize 10s. of Arraignment 6s. 8d.	0	16	8
For every prisoner burnt in the hand, Clerk of Assize 10s.			
of Arraignment 3s. 4d.	0	13	4
For the discharge of every prisoner, the bill being <i>ign'</i>			
Clerk of Assize 10s. of Arraignment 3s. 4d.	0	13	4
For entering and filing every information <i>Qui tam</i> , Clerk			
of Assize	0	2	0
For entering every imparlance thereon, for every name,			
Clerk of Assize	0	2	0
For drawing and entering the defendant's plea of not			
guilty, Clerk of Assize	0	4	0
For drawing every other plea, for every sheet, Clerk of			
Assize	0	1	0
For every licence to compound, Clerk of Assize	0	6	8
For judgment thereupon, Clerk of Assize	0	6	8
For every <i>feri fac'</i> Clerk of Arraignment	0	2	6
For respiting every recognizance to answer, or to traverse,			
Clerk of Assize 4s. of Arraignment 2s. 8d.	0	6	8
For filing, entering, and allowing a <i>noli prosequi</i> or <i>cessat</i>			
<i>processus</i> , for every name, Clerk of Assize 10s. of Ar-			
raignment 3s. 4d.	0	13	4
For calling a traverse, Clerk of Arraignment	0	2	0
For entering a plea, Ditto	0	2	0
For recording the verdict, Ditto	0	2	0
For reading an evidence, Ditto	0	1	0
The Clerk of the Assize's Sumpter-man has for every bill			
of indictment he carries to the gentlemen of the Grand			
Jury	0	0	4
[* 728] * There is an ancient fee always paid by the High Sheriff			
of every county to the Clerk of the Assizes, for his			
and his Clerk's trouble of making out the several calen-			
dars of the prisoners, of	1	13	4

Paid

CIRCUIT COMPANION.

			<i>l.</i>	<i>s.</i>	<i>d.</i>
2 0	Paid by the several gaolers to the Clerk of the Arraigns		0	12	6
3 4	<i>Memorandum</i> , The Fees of Demurrers, <i>Certiorari</i> , Pardons, Informations, or <i>Noli Prosequi</i> , very seldom happen.				
6 8	Fees claimed by the Associate of the <i>Nisi Prius</i> Side, on the Trials of Causes by <i>Nisi Prius</i> , issuing out of the Court of King's Bench and Common Pleas.				
5 0	F OR calling the causes, Associate 1s. Clerk of Assize 1s.		0	2	0
6 8	Reading the record, Associate 1s. Clerk of Assize 1s.		0	2	0
	Calling the defendant to look to his challenges, Associate		0	2	0
	Challenge of a juror, and return thereof on the <i>poslea</i> , Associate		0	2	0
0 0	Marking the defendant's default, and returning thereof on the <i>poslea</i> , Clerk of Assize		0	2	0
8 0	Awarding the tales, and writing the names of the jury on the tales, and return there on the record, Clerk of Assize		0	2	0
14 8	Calling the defendant to confess lease, entry, and ouster, Associate		0	2	0
14 8	Marking the record, that lease, entry, and ouster is not confessed, Associate		0	2	0
1 0	Reading each evidence, and marking the same to have been read in court, in the cause, Associate		0	2	0
16 8	Recording the plaintiff's common verdict, Associate 1s. Clerk of Assize 1s.		0	2	0
13 4	For a private verdict, Associate 2s. Clerk of Assize 2s.		0	4	0
13 4	Upon a verdict and enquiry, where there is a <i>Unica fiat taxatio</i> , Associate 3s. Clerk of Assize 1s.		0	4	0
2 0	Taking notes of particulars, Associate		0	2	0
	Or according to the length, <i>per folio</i>		0	0	8
2 0	<i>Vi & armis</i> where there is a <i>capiat' pro fine</i> , Associate		0	2	0
4 0	* Withdrawing a juror, where the cause is referred, or otherwise, Associate 1s. Clerk of Assize 1s.		0	2	0
	For a copy of the jury sworn, Associate		0	1	0
1 0	For the return of a common <i>poslea</i> , Associate 6d. Clerk of Assize 1s. 6d,		0	2	0
6 8	For every issue, or <i>quoad</i> , Associate		0	2	0
6 8	For taking the minutes of every special verdict, Associate		0	13	4
2 6	For drawing a special verdict, <i>per fol.</i> 8d. Writing fair for counsel, <i>per fol.</i> 8d. For defendant 8d. Engrossing on the record, <i>per fol.</i> 8d.		0	2	8
6 8	Out of which the Clerk of Assize receives <i>per sheet</i>		0	1	0
13 4	For drawing and engrossing every special indorsement 2s. or <i>per fol.</i> Associate		0	1	4
2 0	For a copy of any proceedings, <i>per fol.</i> Associate		0	0	8
2 0	For attending the Court, or the Judge of Assize, with any <i>poslea</i> , or otherwise, Associate		0	6	8
1 0	For recording the defendant's confessing lease, entry, and ouster, and returning thereof on the <i>poslea</i> , Associate		0	2	0
0 4	For recording the defendant's verdict on a <i>non pros'</i> , Associate 1s. Clerk of Assize 3s.		0	4	0
1 13 4	For a certificate of battery being well proved, or a trespass to be voluntary and malicious, or of a probable cause for bringing an action, or such like, Associate		0	6	4
Paid					For

The Clerk of Assize's

For drawing, copying, and entering every order of Assize	l.	s.	d.
or <i>per folio</i> 8d. each, Associate	4s.	8d.	
Clerk of Assize	2s.		
For a warrant of attorney, where the attorney on record does not appear, Associate			o 6 8
			o 1 0

In Causes issuing out of the Court of Exchequer.

For allowance of the Exchequer commission, and filing thereof, Associate			o 4 8
In all other particulars the fees are double what are received in causes out of the <i>King's Bench</i> and <i>Common Pleas</i> .			

In Causes coming out of the Crown-Office.

For filing the Attorney-General's warrant, Associate			o 6 4
Proclamation for each defendant, Associate			o 1 0
Acquittal, for the first defendant, Associate	1s.	Clerk of Assize	6s.
			o 7 0
* Of each other defendant, Associate	1s.	Clerk of Assize	3s.
			o 4 0
In all other particulars the fees are double what are received in causes of the <i>King's Bench</i> and <i>Common Pleas</i> .			

[* 730]

On Challenge to the Array.

Calling the cause, Associate	1s.	Clerk of Assize	1s.	o 2 0
Reading the challenge, Associate	1s.	Clerk of Assize	1s.	o 2 0
Filing thereof, Associate				o 2 0
Reading demurrer, Associate	1s.	Clerk of Assize	1s.	o 2 0
Filing thereof, Associate				o 2 0
Reading joinder in demurrer, Associate	1s.	Clerk of Assize	1s.	o 2 0
Filing thereof, Associate				o 2 0
Judgment in demurrer, Associate				o 4 0
Reading the plea, Associate	1s.	Clerk of Assize	1s.	o 2 0
Filing thereof, Associate				o 2 0
Filing the issue, Associate				o 2 0
Drawing up the judgment, writing fair, and engrossing on the <i>poslea</i> , each sheet, Associate	2d.	Clerk of Assize	6d.	o 0 8
For every order for sparing issues in <i>Bucks, Bed', Hunt', Cambridge, and Norwich</i> , Associate				o 2 6
For every order for sparing issues in <i>Norfolk and Suffolk</i> , Associate				o 5 2

A Table of the Fees now taken by the Clerk of Assizes for the *Northern Circuit*, touching pleas of the Crown and Gaol Delivery.

FOR drawing an appeal			o 6 8
For entering the appearance of the appellee			o 6 8
For entering plea of not guilty			o 2 0
For every other plea, for every sheet,			o 1 0
For joining issue in appeal			o 2 0
For every <i>venire fac'</i> , <i>habeas corpor'</i> , and <i>distring' jur'</i>			o 6 8

CIRCUIT COMPANION.

s. d.	For every <i>subpœna</i> , attachment, <i>distring'</i> , <i>venir'</i> , <i>fac' capias</i> l.	s. d.	
	in process, <i>habeas corpus ad ducend' vel recipiend'</i>	0 2 6	
6 8	* For every writ of privilege, warrant of good behaviour, and writ of restitution	0 6 8	[* 731]
1 0	For drawing every indictment, how short soever	0 2 0	
	If long, then according to the length thereof.		
	For making and signing every special warrant	0 6 8	
	For examining every record on the gaol side, and the Clerk of Assize's hand to it, (except in case of indictment of		
4 8	felony, murder, or treason)	0 6 8	
	And in case of felony, murder, or treason	0 13 4	
	For entering every appearance to an indictment or presentment, in trespass	0 2 4	
	And for entering every confession thereupon	0 2 0	
	And for entering every discharge and acquittal thereupon	0 10 8	
6 4	For drawing and entering every plea of not guilty	0 4 0	
1 0	And for the copy of every indictment, for every sheet	0 0 8	
	And for examining and signing the same, by the Clerk of Assize	0 6 8	
7 0	For joining issue thereupon for the King, commonly called admittance to traverse	0 6 8	
4 0	For drawing every traverse at issue, for every sheet	0 1 0	
	And for entering it upon record, for every sheet	0 1 0	
	And for the copy thereof, for every sheet	0 0 8	
	And for examining thereof, and the Clerk of Assize's hand to it	0 6 8	
	For the Clerk of Assize's hand to the record	0 6 8	
0 2 0	For drawing, entering, copying, examining, and signing every other special plea, issue, or record, the like fees.		
0 2 0	For allowing a <i>certiorari</i> in trespass	0 6 8	
0 2 0	If in felony, murder, or treason	0 13 4	
0 2 0	For certifying thereof, if it be not the record of conviction	0 6 8	
0 2 0	If it be the record of conviction, then for every sheet	0 1 0	
0 2 0	For entering every recognizance (except to prefer indictments or give evidence)	0 5 4	
0 4 0	For every discharge of such recognizance, bail, or mainprize	0 14 8	
0 2 0	For discharge of every prisoner in gaol, ordered to be discharged	0 14 8	
0 2 0	Of every one that hath his pardon allowed	0 16 8	
0 0 8	* For confessing on the behalf of the King, every plea of pardon or acquittal	0 6 8	[* 732]
0 2 6	For filing and entering information <i>Qui tam</i> , &c.	0 2 0	
0 5 3	For entering every imparlance	0 2 0	
	For drawing and entering the defendant's plea of not guilty	0 4 0	
	For drawing every other plea, for every sheet	0 1 0	
	For every licence to compound	0 6 8	
	For entering judgment	0 6 8	
	For every <i>feri fac'</i>	0 2 6	
0 6 6	He likewise claims for entering the conformity of a recusant	0 13 4	
0 2 1	He hath also the like fees upon the trial of traverses, as in causes of <i>nisi prius</i>		

a Vide 10 & 11 Will. III. ch. 23, § 7, 8.

For

The CLERK of ASSIZE'S

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For calling the cause	0	2	0
Verdict, if for the defendant	0	4	0
Each defendant, if found not guilty, pays for acquittal	0	10	8
For reading evidence in court (if any be read) for each	0	1	0

Fees claimed on the *Nisi Prius* Side by the Associate on the Northern Circuit.

Fees paid by the Plaintiff.

FOR the defendant's default	0	2	0
Calling defendant in ejectment to confess lease, entry, and ouster	0	2	0
For a nonsuit by defendant's not confessing	0	4	0
Plaintiff's { In <i>Yorkshire</i>	0	2	0
Verdict { In the three Northern counties	0	4	0

On a Challenge to the Array.

Copy of the challenge	0	1	0
Filing the plea	0	2	0
Copy of the replication	0	1	0

And after the same rate, if the proceedings are carried further.

By the Defendant.

A nonsuit or de- { In <i>Yorkshire</i>	0	4	0
fendant's verdict { In the three Northern counties	0	6	0

[* 733]

* *On a Challenge to the Array.*

Filing the challenge	0	2	6
Copy of the plea	0	1	0
Filing the replication	0	2	0

And after the same rate, if the pleadings are carried further.

By Plaintiff, or Defendant, as they happen.

Calling the cause	0	2	0
Reading the record	0	2	0
For a <i>tales de circumstantibus</i> , and for the extraordinary length of the <i>possea</i> when it happens	0	2	0
The proclamation for information in Crown-Office causes	0	2	0
Filing a warrant from the Attorney-General for a <i>tales</i>	0	2	0
Stating accounts, or taking notes	0	2	0
If very long, something more			
For reading every exhibit for evidence	0	1	0
Challenge to the polls	0	2	0
Attending to take every private verdict	0	6	8
Every certificate	0	4	0
Returning every <i>possea</i> for every issue, and finding by the jury	0	2	0

Between

CIRCUIT COMPANION.

Between Plaintiff and Defendant.

	l.	s.	d.
For every order of assize	0	12	0
Withdrawing a juror	0	2	0
Drawing case and copy	0	7	0
Drawing notes for a special verdict, and copy	0	7	0
Drawing special verdict, <i>per sheet</i>	0	1	0
Copying it, <i>per sheet</i>	0	1	0
Engrossing it, <i>per sheet</i>	0	1	0

The above list of fees are received by me for *Henry Wood*, Esq; the Clerk of Assize. And that I for my executing the office of Associate, having from the Clerk of Assize a certain yearly salary, do take and receive, for my use, the fees and allowances only as underwrote.

Fees for attending with a <i>poslea</i> on any of the Courts at <i>Westminster</i> , or the Judges	0	6	8
* For every search	0	4	0
Allowances out of the above fee for returning <i>posleas</i> , allowed me for writing the return, in every	0	2	6
And out of the fees for drawing, &c. a special verdict, <i>per sheet</i>	0	0	4

THO. PAINE, Associate.

Fees due to the Clerk of Assize and the Associate, on the Crown Side, in the *Oxford Circuit*.

FOR the appearance of every defendant upon an indictment of misdemeanor	0	5	4
For the copy of every ordinary indictment of misdemeanor, if but one name	0	6	8
Out of which is paid to the Associate on the Crown side	0	2	0
If it be a long indictment, after the rate of 8d. <i>per sheet</i>	0	2	0
To the Clerk for writing every copy of an indictment	0	2	0
For every process, out of which is paid to the said Associate	0	1	0
For entering every defendant's plea, if not guilty	0	2	0
For entering every <i>cessat processus</i> 2s. out of which is paid to the said Associate	0	1	0
For every order 6s. out of which is paid to the said Associate	0	2	0
To the Clerk for writing the same	0	1	0
For the submission of every defendant to an indictment 4s. out of which is paid to the said Associate	0	1	0
For taking and entering every recognizance 5s. 4d. out of which is paid to the Associate	0	1	0
For discharging every recognizance 9s. out of which is paid to the said Associate	0	2	4
Note, Where it is for the discharge of a recognizance to traverse, the said Associate receives a moiety of the 9s			
For every order for respiting a recognizance 4s. out of which is paid to the said Associate	0	1	0

For

Between

The Clerk of Assize's

	For calling every cause, reading the record, and proclamation 5s. out of which is paid to the said Associate	l.	s.	d.
		0	3	0
[* 735]	For drawing up the record of every traverse, <i>per</i> sheet 1s. for entering the same on the roll, <i>per</i> * sheet 1s. and for making a copy thereof for the defendant, 8d. <i>per</i> sheet, out of which 2s. 8d. is paid to the Associate <i>per</i> sheet	-	0	1 0
	For the Clerk's fee upon every traverse book	-	0	3 0
	For every <i>subpœna</i> 2s. 6d. out of which is paid to the Associate	-	0	0 6
	To the Clerk for writing every <i>subpœna</i> or other writ	-	0	0 6
	For every <i>venire facias</i> , <i>habeas corpora</i> , or <i>distingas jurator</i> 5s. out of which is paid to the said Associate	-	0	0 6
	For entering every verdict of not guilty, for each defendant	-	0	6 8
	For every <i>habeas corpus</i> to remove a prisoner 2s. 6d. out of which is paid to the said Associate	-	0	0 6
	For every <i>habeas corpus</i> to receive a prisoner 2s. 6d. out of which is paid to the said Associate	-	0	0 6
	To the Clerk for writing each writ	-	0	0 6
	For every writ of restitution 8s. 8d. out of which is paid to the said Associate.	-	0	2 0
	For every writ of protection of privilege 8s. out of which is paid to the said Associate	-	0	2 0
	For the copy of every indictment for felony 13s. 4d. out of which is paid to the said Associate	-	0	2 0
	To the Clerk for writing the same	-	0	2 0
	For every prisoner discharged by proclamation 9s. out of which is paid to the said Associate	-	0	2 4
	For every prisoner convicted and burnt in the hand, or whipt and bound over again, 19s. 4d. out of which is paid to the said Associate	-	0	2 4
	For every prisoner convicted and burnt in the hand, or whipt and discharged, 14s. out of which is paid to the said Associate	-	0	2 4
	For every prisoner found not guilty of one indictment of felony, and discharged, 17s. 8d. out of which is paid to the said Associate	-	0	2 4
	If acquitted of more than one, for each indictment	-	0	8 8
	For pleading every pardon	-	0	17 4
	For the copy of every <i>ignoramus</i> indictment 5s. 4d. out of which is paid to the said Associate	-	0	2 0
	For every <i>fieri facias</i> , or other writ <i>de executione judicii</i> , 6s. 8d. out of which is paid to the said Associate	-	0	1 0
	For the copy of every acquittal 13s. 4d. out of which is paid to the said Associate	-	0	2 0
[* 736]	* For every county calendar 1l. 10s. out of which is to be paid to the said Associate	-	0	10 0
	To the Clerk for writing the same 5s. and for engrossing the Under Sheriff's pannel of his juries in court who try the prisoners 2s. 6d. and to the Clerk of Assize's servant more	-	0	2 6
	For every city calendar 13s. 4d. out of which is paid to the said Associate	-	0	2 4
	To the Clerk for writing the same, and engrossing the pannel of the jury for the Under Sheriff, &c.	-	0	5 0

CIRCUIT COMPANION.

d.	For the return of every <i>certiorari</i> of every indictment of l.	s.	d.
0	felony 16s. 8d. out of which is paid to the said Associate	0	3 4
	For the return of every <i>certiorari</i> of every indictment of		
	trespass 10s. out of which is to be paid to the said		
	Associate	0	3 4
	For every writ or warrant of good behaviour, for the first		
0	name	0	2 6
0	For every other name	0	2 0
6	To the Associate	0	1 0
6	For every certificate that a person stands indicted in order		
6	to procure a Justice of Peace's warrant	0	2 0
6	To the Clerk for writing it	0	1 0
8	But if a certificate to any of the Courts at <i>Westminster</i> 6s.		
8	8d. out of which is paid to the Clerk for writing it	0	1 0
6	To the Clerk for every search for an indictment or other		
6	matter	0	1 0
6	For the allowance and entry of every <i>noli prosequi</i> , upon		
6	each indictment	0	13 4
6	For reading every exhibit, to the Associate	0	1 0
6	For the entry of every traverse (which is received by the		
0	Judge's Marshal for the Clerk of Assize)	0	2 0
0	For glove-money from the Sheriff to the Clerk of Assize	1	0 0
0	and his Officers, when there is a maiden assize		
0	For a certificate for the reward of forty pounds	0	5 0
2	For every order to spare every issue of the petty juryman,		
2	to the Associate	0	2 0
2	For a transcript from an indictment, in order to convict a		
2	felon for being at large after ordered to be transported	0	2 6
2	To the Clerk of Assize's servant for going with the pro-		
2	secutor and witnesses, and carrying every indictment		
2	from the Clerk of Indictments to the Court, and get-		
2	ting them sworn thereto, and carrying the same to the		
2	Grand Jury	0	0 4

* Fees due to the Clerk of Assize and Associate on the Crown Side for [* 737] Informations in the Oxford Circuit.

2	For filing every information of the informer	0	6 8
8	For the <i>subpana</i> thereupon 2s. 6d. out of which is paid		
17	to the said Associate	0	0 6
2	For the defendant's appearance thereupon	0	4 0
2	For every plea of not guilty	0	2 0
1	For every other plea according to the length, <i>per sheet</i>	0	1 0
2	For every <i>venire facias</i> 2s. 6d. out of which is paid to the		
2	said Associate	0	0 6
10	For every <i>habeas corpora</i> or <i>disstringas jur'</i> 2s. 6d. out of		
10	which is paid to the said Associate	0	0 6
2	For entering every judgment, either for the informer or		
2	for the defendant	0	6 8
2	For every <i>feri facias</i> , or <i>capias ad satisfac'</i> , &c. 3s. 6d.		
2	out of which is paid to the said Associate	0	0 6
2	To the Clerk for writing every writ	0	0 6

Memorandum, The other fees for drawing up and entering
the record, &c. are as before upon the indictments.

C c

Memorandum,

The CLERK of ASSIZE'S

Memorandum, The fee of 13s. 4d. for the copy of an indictment of felony, and several other fees relating to felony and *certiorari*, writs of restitution, protection, and *noli prosequi*, very rarely happen.

Fees due to the Clerk of Assize and Associate on the Nisi Prius Side in the Oxford Circuit.

For the entry of every cause, which is received by the Marshal for the Clerk of Assize	-	-	0	2	0
For the entry of every <i>Exchequer</i> record, or information out of the <i>Crown-Office</i> , which is received by the Marshal for the Clerk of Assize	-	-	0	4	0
For calling every cause, to the Clerk of Assize	-	-	0	2	0
For reading every record, to the said Associate	-	-	0	2	0
For every default 2s. 4d. out of which is paid to the said Associate	-	-	0	0	4
For every <i>tales de circumstantibus</i> 2s. 4d. out of which is paid to the said Associate	-	-	0	0	4
For every <i>non prof'</i> 4s. 4d. out of which is paid to the said Associate	-	-	0	2	4
[* 738] * For every defendant's verdict 4s. 4d. out of which is paid to the said Associate	-	-	0	2	4
For every plaintiff's verdict 2s. out of which is paid to the said Associate	-	-	0	1	0
For every verdict against the King, upon information, 5s. 4d. out of which is paid to the said Associate	-	-	0	3	4
For every warrant of attorney, to the said Associate	-	-	0	0	8
For the return of every <i>poslea</i> , to the Clerk of Assize	-	-	0	2	0
For marking the pannel upon default in ejectment, to the said Associate	-	-	0	2	0
For every order of assize, to each party 6s. out of which is paid to the said Associate for each party	-	-	0	2	0
For every certificate signed by the Judge in court on the back of the pannel, to the said Associate	-	-	0	6	0
For every challenge to the poll, to the said Associate	-	-	0	2	0
For every challenge to the array, to the said Associate	-	-	0	4	0
For drawing up every challenge and every plea thereto, for each to the said Associate	-	-	0	4	0
For reading every evidence or exhibit in court, to the said Associate	-	-	0	1	0
For taking an account in court, directed either by the Judge or Counsel, to the said Associate	-	-	0	2	0
For every order to spare every issue, to the said Associate	-	-	0	2	0
For every private verdict, to the Associate, besides the usual fees	-	-	0	4	8
For the copy of the notes of every special verdict, each party pays to the said Associate	-	-	0	3	6
For every <i>retraxit</i> , to the said Associate, from each party	-	-	0	2	0
For every <i>Exchequer</i> commission and <i>mittimus</i> , for each cause, to the said Associate	-	-	0	4	0
For the copy of every jury made for plaintiff or defendant, (if required) to the said Associate	-	-	0	2	0
For the copy of the endorsement of the verdict on the pannel, to the said Associate	-	-	0	2	0

CIRCUIT COMPANION.

	l.	s.	d.
For endorsing what is found upon an issue directed out of <i>Chancery</i> , to the said Associate	-	-	0 2 0
For attending either at the Crown Side, or at the Judge's chambers, to take a verdict, to the said Associate	0	3	4
* For every confession <i>reliaa verificatione</i> , to the said Associate	-	-	0 4 0
For drawing up every special verdict, and engrossing the same, and making two copies thereof for plaintiff and defendant, <i>per sheet</i> to the Clerk of Assize	-	0	3 4
For every <i>subpœna</i> , to the Clerk of Assize	-	0	2 6
For every private verdict which is received by the Marshal, for the Clerk of Assize	-	-	0 2 0
For attending any of the Courts at <i>Westminster</i> with a <i>postea</i> , when either party moves an arrest of judgment, to the said Associate	-	-	0 6 8

[* 739]

Fees due to the Clerk of the Indictments on the Oxford Circuit.

For every common bill of felony	-	-	0 2 0
For every special bill under five sheets	-	-	0 3 4
If above five sheets 8d. <i>per sheet</i> drawing, and 4d. engrossing.			

Fees taken by the Clerk of Assize for the Western Circuit.

On the Crown Side.

FOR drawing every bill of indictment in felony	0	2	0
For every common bill of indictment in trespass	0	3	4
For every special bill of indictment in perjury, forgery, and riots	-	-	0 6 8
For every process, as <i>ven' fac'</i> , <i>subp'</i> , <i>cap'</i> , or attachment	0	2	6
For recording appearance of every defendant	-	0	5 4
For copy of indictment or information	-	0	8 8
For recording every plea	-	0	4 0
For every special plea, <i>per sheet</i>	-	0	1 0
For taking every recognizance	-	0	6 4
For discharging every recognizance	-	0	6 4
For respiting every recognizance	-	0	6 4
For every imparlance	-	0	2 0
For every writ of <i>habeas corpus</i> to deliver a prisoner	0	4	4
For every writ of <i>habeas corpus</i> to receive a prisoner	0	4	4
For every writ of <i>habeas corpus ad testificand'</i>	-	0	6 8
For every <i>ven' fac'</i> on a traverse	-	0	6 4
For recording every acquittal	-	0	13 4
For drawing up every special verdict, <i>per sheet</i>	-	0	1 0
* For engrossing the same, <i>per sheet</i>	-	0	1 0
For copy thereof, <i>per sheet</i>	-	0	0 8
For drawing up the issue on every traverse, <i>per sheet</i>	0	1	0
For entering the same on the roll, <i>per sheet</i>	-	0	1 0
For copy thereof, <i>per sheet</i>	-	0	0 8

[* 740]

N. B. Though there be ten or more persons indicted, yet only one issue is drawn up, or paid for.

a Vide 10 & 11 Will. III. ch. 23, § 7, 8.

The CLERK of ASSIZE's

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every warrant <i>per-cur'</i>	0	2	6
For every writ of restitution	0	6	8
For every writ of protection	0	6	8
For carrying the bill of indictment from the court to the Grand Jury	0	0	4
For a copy of every indictment, or inquisition in treason, murder, or felony	0	13	4
For relinquishing a plea pleaded, and entering a confession, <i>cum protestando</i>	0	13	4
For the discharge of every parish or township for not repairing their highways upon an indictment or presentment by the Grand Jury	1	16	4
For discharging the same on a presentment by a constable	0	13	4
For filing every certificate	0	3	4
For every gaol prisoner discharged by proclamation	0	13	4
For allowing every writ of <i>certiorari</i>	0	13	4
For transcript of the record annexed to the same	1	6	8
Allowing a <i>noli prosequi</i> , for each person	0	13	4
For pleading, entering, and allowing every circuit pardon	1	3	4
For pleading, entering, and allowing every special pardon	5	0	0
For copy of conviction of traitor, felon, or murderer	1	6	8
For copy of the acquittal of any such	1	6	8
For copy of examination, information, or recognizance	0	3	4
For every <i>ignoramus</i> on an indictment in felony, treason, and murder	0	13	4
For every <i>ignoramus</i> on an indictment for trespass	0	6	8
For every order of the Court, and copy	0	4	0
For a copy of every Jury impannelled	1	3	4
For reading every exhibit offered in court as evidence, except charters and acts of parliament	0	1	0
* For reading every charter, or act of parliament	0	2	0
For reading and filing every affidavit	0	2	0
Of the Sheriff of each county, (except the counties of <i>Devon</i> and <i>Somerſet</i>) for perusing and amending their process and return, to avoid mistakes, and making a calendar, wherein are contained the several orders on every prisoner	2	10	0
Of the Sheriffs of <i>Devon</i> and <i>Somerſet</i>	4	10	0
Of every gaoler, except the gaolers of <i>Devon</i> and <i>Somerſet</i>	1	1	0
Of the gaoler of <i>Devon</i> and <i>Somerſet</i>	2	0	0

On the *Nisi Prius* Side.

For entering and filing record of <i>nisi prius</i>	0	2	0
For recording a default	0	2	0
For recording the tales	0	2	0
For recording every nonsuit, or defendant's verdict	0	4	0
For recording every plaintiff's verdict	0	2	0
For calling the Jury	0	2	0
For reading the record	0	2	0
For reading every deed, or other exhibit	0	1	0
For reading every act of parliament, or charter	0	2	0
For every account taken in court	0	2	0
For every order made in court, each party	0	4	0

CIRCUIT COMPANION.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the copy thereof	0	1	0
For the Judge's hand on endorsing the pannel, and drawing the certificate	0	4	0
For the return of every <i>possea</i>	0	2	0
If more than one issue, for each issue	0	1	0
For a copy of the record of <i>nisi prius</i> , per sheet	0	0	8
For entering the proclamation upon trials of indictment and information	0	2	0
For drawing a copy of the notes of a special verdict	0	6	8
For drawing a special verdict, per sheet	0	1	0
For entering and engrossing, per sheet	0	1	0
For copy thereof for plaintiff and defendant, per sheet	0	0	8
For every private verdict	0	6	8
For withdrawing a juror, each side	0	1	0

Memorandum, the fee of 13s. 4d. for the copy of every indictment in felony, with the caption of the Court, &c. and the fees relating to a pardon, *certiorari*, writ of restitution, and *noli prosequi*, very rarely happen.

* Fees taken by the Clerk of Assize of the Home Circuit: Such also [* 742] being anciently received by his Predecessor.

Fees in an Assize.

[Those Proceedings are out of Use, and but one Assize brought in thirty Years.]

FOR the Assize upon putting it into Court	0	2	0
For arraigning the Assize	0	6	8
For drawing the plaint	0	1	0
For recording the appearance of every tenant	0	2	0
For entering the default	0	2	0
For every adjournment of the plaintiff	0	2	0
Of the defendant	0	2	0
For entering the warrant of attorney	0	2	0
For entering of the plaint, if it be not above three sheets	0	2	0
If it be more, for every sheet	0	1	0
For the copy of every plea, for every sheet	0	0	8
For making up the book when it is at issue, for every sheet	0	1	0
For the copy of the issue, for every sheet	0	0	8
For entering every judgment	0	4	0
For entering every discontinuance	0	4	0
For the writ of seisin	0	2	0
And if it be with a <i>fieri facias</i> for costs	0	4	0
For entering the seisin returned by Sheriff	0	2	0
For every writ of <i>resum' hab' cor'</i> , and such other	0	2	0
For every writ of <i>resum'</i> , with a <i>reattach'</i>	0	4	6
To the Clerk for writing every such writ	0	0	6

Fees upon the Nisi Prius.

FOR entering every record of <i>nisi prius</i> with the Marshal, the fee received by the Marshal, and accounted for to the Clerk of Assize	0	2	0
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If

The CLERK of ASSIZE's

[* 743]	*	If the Attorney appear not, then for the warrant of attorney	l.	s.	d.
			0	0	8
		For calling the cause and copy of issue	0	2	0
		For every default, <i>non' pros'</i> , confession or verdict for the defendant, and <i>tales</i> , for every of them	0	2	0
		For every challenge	0	2	0
		If the challenge be tried by verdict	0	4	0
		For every privy verdict received by the Marshal, and accounted for to the Clerk of Assize	0	2	0
		* To the Associate for attending and taking the privy verdict	0	2	0
		For drawing every special verdict at the equal charges of plaintiff and defendant, for every sheet	0	1	0
		For engrossing it, for every sheet	0	1	0
		For the copy of every sheet	0	0	8
		For every <i>subpana</i>	0	2	6
		For the Clerk of Assize's hand to every order, certificate, or other business	0	2	0
		For reading an evidence	0	1	0
		For returning the <i>poslea</i>	0	2	0
		For every issue after the first	0	1	0
		For indorsing the certificate in some cases of small trespasses, that the battery was well proved, or that the title came in question	0	2	0

Fees in the Gaol Court.

[* 744]	*	EVERY prisoner in the gaol, delivered by proclamation, paid formerly for his discharge 8s. 8d. out of which the Judges, Marshal, and Cryer had 1s. each; but of late the Marshal and Cryer take their own fees, and the Clerk of Assize takes	0	6	
		Every person convicted, burnt in the hand, or whipped, pays	0	4	
		Every prisoner being indicted and acquitted of felony, paid formerly 11s. 4d. out of which the Marshal had 2s. 4d. and the Cryer 1s. but of late they take their own fees, and the Clerk of Assize takes	0	8	
		Every person coming in upon bail to answer for felony or wounding, paid formerly for the discharge of his recognizance 8s. 4d. out of which the Marshal and Cryer had 1s. each, but of late they take their own fees, and the Clerk of Assize takes	0	6	
		For the peace or good behaviour, paid formerly 6s. 8d. out of which the Marshal and Cryer had 1s. each, but of late take their own fees, and the Clerk of Assize takes	0	4	
		For taking every recognizance in court to answer, &c. 6s. 8d. out of which the Marshal and Cryer had 1s. each, but of late they take their own fees, and the Clerk of Assize takes	0	4	
		For making every ordinary indictment, to three Clerks among themselves	0	2	
		If special, according to the length, for every sheet	0	0	
		* For engrossing every sheet	0	0	

CIRCUIT COMPANION.

		<i>l.</i>	<i>s.</i>	<i>d.</i>
d.	For the copy of every indictment in felony with the caption of the Court, and the names of the Grand Jury, whereof none can be made but by warrant from the Attorney-General, or by the Judge's order, which seldom happens	-	-	-
8		0	13	4
0	For pleading every special pardon and allowance	-	0	13
0	And gloves to each officer.	-	-	4
0	For enrolling the pardon, and copy of enrolment, for every sheet	-	0	1
0		-	-	0
0	For the allowance and return of a <i>certiorari</i> in felony, being very seldom granted	-	0	13
0		-	-	4
0	For the allowance of a <i>certiorari</i> in trespasss, for the first name	-	0	6
0		-	-	8
0	For every name after the first name therein	-	0	2
0		-	-	0
8	For the return of the writ, and therewith certifying each indictment	-	0	2
6		-	-	0
2	For a copy of every indictment in trespasss, if not above five sheets	-	0	3
0		-	-	4
0	And if above five sheets, for every sheet	-	0	0
0		-	-	8
0	For recording the appearance in trespasss, for each person	-	0	2
0		-	-	4
0	For every plea of not guilty	-	0	2
0		-	-	4
0	For every recognizance to prosecute a traverse	-	0	2
0		-	-	4
0	For drawing and entering the issue	-	0	2
0		-	-	0
2	For every <i>venire fac'</i> , <i>duod'</i> , <i>habeas corpus</i> , or <i>disfringas</i>	-	0	2
0		-	-	6
0	For recording the acquittal or conviction	-	0	6
0		-	-	8
0	For every person submitting to every indictment after appearance and copy	-	0	6
0		-	-	8
0	For making and discharging the process of every <i>capias</i> or <i>disfringas</i>	-	0	2
0		-	-	6
0	For drawing and entering on the roll every record of conviction or acquittal, for every sheet	-	0	0
0		-	-	8
0	For the copy of a record in a traverse, for every sheet	-	0	0
0		-	-	8
6	For every writ of restitution	-	0	6
0		-	-	8

These Proceedings are little in Use.

0	For filing every information	-	0	2	0
0	For the <i>subpœna ad respondendum</i>	-	0	2	4
8	For the appearance of the defendant	-	0	2	4
0	For the copy of every sheet	-	0	0	8
0	For every plea of not guilty	-	0	2	4
0	For every special plea, for every sheet	-	0	0	8
0	For engrossing and entering the same on record, for every sheet	-	0	0	4
0		-	-	-	0
0	For entering and recording every judgment thereupon	-	0	4	0
0	For every <i>fi' fa'</i> , or <i>ca' ad satisfaciendum</i> ,	-	0	2	6
0	For recording every submission of a recusant, and certifying it into the <i>Exchequer</i>	-	0	10	0
0	For drawing, entering, and copying every order, 3s. and signing by the Clerk of Assize 2s. <i>in toto</i>	-	0	5	0
0	For the copy of the calendar of the judgments and orders of all the prisoners in every gaol	-	0	5	0
0	For a bond for the defendant to pay costs, in case he be convicted after allowance of the <i>certiorari</i> in such particular cases as the statute requires	-	0	2	6
0	For allowing every writ of error	-	0	8	8

For

[* 745]

The CLERK of ASSIZE'S

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For certifying the record thereupon, for every sheet	0	0	8
For allowing every <i>certiorari</i> out of <i>Chancery</i> , for the record of manslaughter <i>per infortunium</i> , &c. in order to a pardon of course	-	-	0 8 8
For certifying the record thereupon, for every sheet	0	0	8
For filing, allowing, and entering a <i>noli prosequi</i> , or <i>cessat process</i> , from Mr. Attorney-General, for every person indicted	-	-	0 13 4
For respiting every recognizance	-	-	0 6 8
For every defendant's verdict upon a traverse, to the Associate	-	-	0 2 0
The fee of 2s. for every <i>tales</i> is taken away by Act of Parliament.			

Eldred Launcelot Lee, Clerk of Assize and
General Gaol-Delivery, &c.

Fees taken in the Office of Clerk of the Peace and Gaol-Delivery of the County of Middlesex.

F OR every recognizance entered into in the court	0	2	4
For the discharge of every recognizance for the peace and good behaviour	-	-	0 2 4
If for bruising, wounding, felony, or suspicion of felony	0	4	8
For the respiting of every person's recognizance from one session to another, in case of sickness, or other just cause	0	2	4
[* 746] * For the discharge of every recognizance for felony, where an indictment hath been preferred to the Grand Jury, and returned <i>ignoramus</i>	-	-	0 9 4
For the copy of every recognizance	-	-	0 2 4
For entering and recording the appearance and plea of guilty, of every person on every indictment	-	-	0 4 8
For recording the acquittal or conviction of every person upon trial of traverse on every indictment of trespass, and for the discharge of the recognizance	-	-	0 10 4
For recording the plea of conformity of every person indicted of recusancy	-	-	0 9 4
For the allowance and recording of every warrant of <i>noli prosequi</i> , or <i>cessat processus</i> , from the Attorney-General for every person in every indictment	-	-	0 6 8
For the allowance of every writ of <i>certiorari</i> to remove an indictment	-	-	0 6 8
For the return thereof	-	-	0 2 0
For every other indictment removed by the same writ	0	2	0
If there be more persons than one in the indictment or indictments, then more for every person after the first name	-	-	0 1 0
For every bond taken for the defendant to pay costs, upon the allowance of a <i>certiorari</i> to remove indictments for riot, assault, or forcible entry	-	-	0 2 6
For the allowance of every writ of <i>procedendo</i>	-	-	0 6 8
For the allowance of every writ of error, which rarely happens	-	-	0 13 4
For drawing, engrossing, and copying the return <i>per sheet</i>	0	0	8
For the copy of every indictment for riot, rout, or forcible entry	-	-	0 6 8

For

CIRCUIT COMPANION.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the copy of every ordinary indictment of trespass	0	3	4
Or eight-pence <i>per</i> sheet, according to the length thereof			
For drawing, entering, and copying of every record in trespass, eight-pence <i>per</i> sheet			
For drawing every ordinary indictment, to the Clerks for themselves	0	2	0
For every special indictment	0	3	4
If above five sheets, according to the length thereof, 8d. <i>per</i> sheet			
For every certificate	0	2	6
*For drawing, entering, and a copy of every order of sessions	0	5	0
For every short order of summons to attend the Court	0	1	0
For every <i>venire fac'</i> , <i>duod'</i> <i>disfringas</i> , <i>attachm'</i> , <i>capias</i> , <i>fieri fac'</i> , and <i>subpœna</i>	0	2	6
For attending, taking, recording, and registering every recognizance before the Justices of the Peace at their yearly general renewing the licences of alehouse-keepers, and for a true copy of the recognizance and condition, for every alehouse-keeper	0	10	6
For recording and registering, and for a copy of the recognizance and condition, for every alehouse-keeper licensed between the yearly general renewing of licences	0	2	6
There is paid more to the Clerk of the Peace's Clerk for the licences last mentioned	0	1	0
For registering and recording the name of every person who takes the oath of fidelity to their Majesties, pursuant to the statute	0	1	0
For registering the name of every Protestant dissenting minister, who, in pursuance of the late act for that purpose, takes the said oaths, and subscribes the articles of religion	0	0	6
For every certificate thereof	0	0	6
For making out the estreat of every fine set upon a presentment made upon the view of a Justice of Peace for not repairing the highways, pursuant to a statute made 2 & 3 <i>Phil. & Mar.</i> for every 20s.	0	1	0
For attending a special session for enquiring of forcible entries and detainers, &c.	0	6	8
For drawing the inquisition	0	6	8
For the writ of restitution	0	6	8
For the Court's discharge of every prisoner out of New Prison, where there is no prosecution	0	2	0
For the discharge of every person committed to the house of correction, that is discharged in court	0	1	0

[* 747]

Fees taken upon Informations, which very seldom happen in Middlesex.

FOR drawing or filing the information	0	3	4
For every appearance upon an information	0	2	4
For every plea not guilty	0	2	4
For every special plea, <i>per</i> sheet	0	0	8
* For every rule made after appearance	0	1	0
For engrossing and entering up the record, <i>per</i> sheet	0	0	4
For entering the judgment thereupon	0	4	0

[* 748]

For

The CLERK of ASSIZE'S

For the copy, *per sheet* - - - *l. s. d.*
 0 0 8

Fees taken at the Gaol Delivery.

FOR taking every recognizance entered into in the court 0 5 4
 Out of which there is 8d. paid to the Sword-bearer, and 8d. to the Cryer - - - 0 1 4
 The like fee is taken for the discharge of every recognizance - - - 0 1 4
 For every prisoner discharged by proclamation in the court, where there is no prosecution - - - 0 2 0
 For the appearance and plea, and recording the conviction or acquittal of every person indicted - - - 0 4 0
 Out of which there is 4d. paid to the Cryer, and 4d. to the Sword-bearer - - - 0 0 8
 For every copy of an indictment for felony, which very seldom happens, there being none granted without the Attorney-General's warrant - - - 0 13 4
 If long, then *per sheet*, according to the length thereof 0 1 0
 For the allowance of every pardon pleaded for felony of treason - - - 0 13 4
 For the draught, copy, and inrolment of every pardon, or other record in felony or treason, according to the length thereof, *per sheet* - - - 0 1 0
 For the allowance of every writ of *certiorari* in felony or treason - - - 0 14 4
 For the return thereof - - - 0 6 8
 For swearing the witnesses on trials - - - 0 0 0
 For every writ of restitution - - - 0 6 8
 For drawing the affidavit, and swearing the party to the due service of the writ of restitution - - - 0 1 0
 For filing every special plea - - - 0 2 0
 For the certificate of conviction, drawing and engrossing the bill for a general pardon, and for the allowance thereof - - - 0 13 4
 For drawing and certifying of records of outlawry in the King's Bench, *pro Rege* - - - 0 1 0
 For the allowance of every writ of error in felony or treason - - - 0 13 4
 For drawing, entering, and copy of the return, according to the length thereof, *per sheet* - - - 0 1 0

[* 749]

* *Fees taken by the Clerk of the Peace of the County of Surrey.*

FOR entering the appearance to every indictment or presentment - - - 0 2 0
 For entry of every plea, if not guilty - - - 0 2 4
 For every recognizance to prosecute a traverse - - - 0 2 4
 For the copy of every ordinary indictment - - - 0 3 4
 For the copy of an indictment of perjury, forgery, and all other long indictments, *per sheet* - - - 0 0 8
 For the *ven' fac'* - - - 0 2 4
 For discharging the recognizance, and drawing up the record, and entering every acquittal - - - 0 8 8
 For drawing up and recording every conviction - - - 0 8 8
 For

CIRCUIT COMPANION.

		l.	s.	d.
d.	For the appearance, copy, recording, and entering every			
8	confession - - - - -	0	8	8
	For discharging every recognizance for the peace - - - - -	0	2	4
	For discharging every other recognizance - - - - -	0	4	4
	For respiting every recognizance from one session to another - - - - -	0	4	8
4	For the copy of a recognizance - - - - -	0	2	4
	For every recognizance entered into in court, other than			
4	to prosecute a traverse - - - - -	0	2	6
	For the allowance and recording a warrant of <i>noli prosequi</i>			
4	from the Attorney-General against every person in every			
	indictment - - - - -	0	6	8
0	For the allowance of every <i>cessat process</i> from the Attorney-			
	General, and recording the same on every indictment - - - - -	0	6	8
0	For the allowance of every <i>certiorari</i> - - - - -	0	6	8
	For the return thereof - - - - -	0	2	0
8	For every indictment after the first, if there be more than			
	one - - - - -	0	2	0
	If more persons than one in the indictment, then every			
4	person after the first - - - - -	0	1	0
0	For every bond taken upon the allowance of every <i>certiorari</i>			
	upon indictments of forcible entry, riots, and battery - - - - -	0	2	6
4	For the allowance of every writ of <i>procedendo</i> - - - - -	0	6	8
	For the allowance of every writ of error - - - - -	0	13	4
	For the return of the record, <i>per sheet</i> - - - - -	0	0	8
0	For drawing every ordinary indictment - - - - -	0	2	0
	For drawing indictments for riots, forcible entry, and			
4	other special indictments - - - - -	0	3	4
8	For every special indictment, as perjury, forgery, or the			
0	like, <i>per sheet</i> - - - - -	0	0	8
8	For every <i>subpana</i> - - - - -	0	2	6
	For every <i>disfringas</i> - - - - -	0	2	6
0	* For every first licence of badger, kidder, or drover - - - - -	0	5	0
0	For every licence after the first - - - - -	0	2	6
	For every order for choosing a petty constable or head-			
4	borough - - - - -	0	2	0
	For every high constable's order - - - - -	0	3	0
0	For every pensioner's order - - - - -	0	2	6
	For drawing, entering, and copying all parish orders, and			
4	other special orders - - - - -	0	5	0
	For every writ of restitution, in forcible entry or detainers - - - - -	0	6	8
0	For licensing and registering every alehouse-keeper and			
	viñtaller within the borough of <i>Southwark</i> - - - - -	0	1	6
	For making out the <i>estreats</i> for levying fines for not re-			
0	pairing highways, on a record made in the view of a			
2	Justice of the Peace, in the pound, <i>per statute</i> - - - - -	0	1	0
4	For registering and taking the oaths of allegiance and			
4	supremacy on a certificate of receiving the sacrament - - - - -	0	1	0
8	For every special certificate thereof - - - - -	0	2	6
0	For entering the taking the oaths, and making and sub-			
2	scribing the declaration by every dissenter - - - - -	0	0	6
8	Certificate of the same - - - - -	0	0	6
4	For registering and making certificate of the place of hold-			
	ing every conventicle - - - - -	0	0	6

[* 750]

Fees

The Clerk of Assize's

Fees upon Informations.

	l.	s.	d.
F OR drawing the information	-	0	3 4
For every appearance to an information	-	0	2 4
For every plea of not guilty	-	0	2 0
For every special plea, <i>per sheet</i>	-	0	0 8
For every licence to compound	-	0	4 0
For every rule made after the appearance	-	0	1 0
For engrossing and entering the record, <i>per sheet</i>	-	0	0 8
For entering judgment thereon	-	0	0 4
For the <i>subpœna</i> to answer	-	0	2 0
For the copy, <i>per sheet</i>	-	0	0 8
For every <i>fi' fa'</i> or <i>ca' sa'</i>	-	0	2 6

* [751]

* K I N G ' s B E N C H.

An Account of the Fees of the Officers and Servants belonging to the Judges in *Westminster Hall*.

A List of Fees taken by the Associate and Marshal to the Right Honourable the Lord Chief Justice of the King's Bench in London and Middlesex.

F OR entering every cause for trial	-	0	11 8
Out of the entering fee the Lord Chief Justice has			
6s. 8d. Marshal 4s. Cryer 1s.			
As Associate, for every cause tried	-	0	2 0
For calling the cause to be tried	-	0	2 4
As Marshal, for every tales	-	0	2 0
For every default	-	0	2 4
For warrants of attorney, when the Attorney is not sworn	-	0	4 0
For a defendant's verdict or plaintiff's nonsuit	-	0	2 0
For returning the <i>poslea</i>	-	0	2 0
For every record withdrawn	-	0	4 0
For a <i>ne recipiatur</i>	-	0	2 0
For a plaintiff's verdict in a crown cause	-	0	2 0
To the Deputy Marshal in <i>London</i>	-	0	1 0
To my Lord's Clerk attending	-	0	2 0
Cloth money, which is distributed among my Lord's servants	-	0	1 0

Fees taken by the Cryer at the Sitzings of Nisi Prius, in London and Middlesex, before the Lord Chief Justice, viz.

F OR calling every cause	-	0	2 0
For every tales	-	0	2 0
For every default	-	0	2 0
For every witness sworn	-	0	0 4
For verdict for the defendant, or nonsuit	-	0	2 0

CIRCUIT COMPANION.

Fees on Indictments or Informations.

	l.	s.	d.
Proclamation	0	2	0
Not guilty	0	2	0
Plaintiff's verdict	0	2	0
Swearing interpreter	0	2	0

* Fees taken at Trials at Nisi Prius in London and Middlesex by the Clerk of Nisi Prius to the Lord Chief Justice of his Majesty's Court of King's Bench. [* 752]

FOR calling the Jury	0	2	0
For reading the record	0	2	0
For a tales	0	2	0
For a default	0	2	0
For every verdict or nonsuit	0	2	0
For taking notes	0	2	0
For reading every deed, or other exhibit	0	1	0
For the certificate of the Chief Justice	0	2	0
For calling the Jury on an information, or indictment	0	4	0
For proclamation	0	2	0
For taking a special verdict and copy of the notes	0	6	8
For taking a private verdict	0	6	8
For drawing a special verdict, per sheet	0	1	0
For engrossing, per sheet	0	0	8
For copy, per sheet	0	0	4
For a recognizance	0	4	0
For every order or rule of nisi prius	0	4	0

Fees taken at the Chambers of the Lord Chief Justice of the Court of King's Bench, by his Clerks.

MITTIMUS, or certiorari to remove a record of a judgment, but nothing for certiorari for orders, convictions, or indictments, Chief Justice 6s. 8d. Clerk 2s.	0	8	8
Commission for bails and affidavits, excluding engrossment, parchment, and duty, Clerk	0	18	6
Acknowledging a statute, Chief Justice 3s. 4d. Clerk 2s.	0	5	4
From the Clerk of the Errors, each bail, Judge's Clerk	0	2	0
Bail on habeas corpus in term, Master of the Office 4s. 10d. Judge's Clerk 1s. 2d. Porter 6d.	0	6	6
In vacation, Master of the Office 4s. 10d. Judge's Clerk 2s. 2d. Porter 6d.	0	7	6
Bail on cepi corpus in term, Master of the Office 2s. 6d. Judge's Clerk 1s. Porter 6d.	0	4	0
In vacation, Master of the Office 2s. 6d. Judge's Clerk 2s. Porter 6d.	0	5	0
Filazer's bail, Judge's Clerk	0	2	0

* Fiat for certiorari, writ of certiorari, an order, extra-judicial affidavit, bill on writ of error, additional ditto, fiat, superseedeas, paper-book, a case, filing interrogatories, signing depositions, every witness sworn, to be examined [* 753]

The CLERK of ASSIZE's

	l.	s.	d.
examined before a Judge, or Referees by rule of court, to Judge's Clerk	0	2	0
Summons, rule for bail or better bail, adding or justifying bail, signing a common bail-piece, affidavit of Quaker's affirmation, (except of debt in order to hold to bail), rules in ejectment, each, Judge's Clerk, in term	0	1	0
In vacation	0	2	0
Affidavit of a debt to hold to bail, and swearing an Attorney, each, Judge's Clerk	0	2	0
Habeas corpus and fiat, Judge's Clerk	0	4	0
Bail on certiorari, or to appear, or to try indictment, Judge's Clerk, in term	0	1	6
In vacation	0	2	6
Admission of a guardian, and caption of a fine, each, Chief Justice 6s. 8d. Judge's Clerk 5s. Porter 4d.	0	12	0
Warrant in delegates, appointment to hear Counsel, entering every caveat, and carrying a bail-piece to Westminster, each Judge's Clerk	0	2	6
Commitment and render in discharge of bail, each Deputy Marshal 2s. Clerk of the Papers 1s. Judge's Clerk 4s. Tipstaff 6s. Porter 6d.	0	13	6
Sentence in Delegates, attendance by Counsel each side, Judge's warrant, commitment thereon for want of bail, supersedeas to a Judge's warrant, order to charge a person in custody for a criminal matter with an action, each, Judge's Clerk	0	5	0
For an escape warrant, Judge's Clerk	0	5	6
Passing Sheriff's accounts, fiats for Commissioners of Sewers, each, Judge's Clerk	0	10	0
Taking away special bail (if it remains upon the file above a year) each year 1s. and judgment by confession, each, Judge's Clerk	0	1	0
Special orders for bail upon affidavits, before suing out the writ, including swearing the affidavits, Judge's Clerk	0	10	0
Bail on a Judge's warrant, Judge's Clerk 3s. 6d. Tipstaff 2s. Footman 2s.	0	6	6
Acknowledging a deed, depositions upon interrogatories, or suggestion for prohibition, every witness, Judge 6s. 8d. Judge's Clerk 2s.	0	8	8
* Judge's Clerk's attendance to take an affidavit as a Commissioner	0	6	8
Copy of depositions, each sheet copywise, Judge's Clerk	0	0	8
The Judge's Clerk receives for every prisoner committed or rendered, for the Chaplain of the King's Bench prison, pursuant to a rule of court	0	2	0
For every habeas corpus signed at the King's Bench office, 1s. is received for the Clerks of the Judge's chambers, to be divided among them	0	1	0
Bye-laws of a corporation, allowed at the Lord Chief Justice's chamber, Judges 5l. Judge's Clerk 3l.	8	0	0
Taken of the cursitors for dedimus at the end of every term, Judge 10l. Clerk 1l.	11	0	0
Returning dedimus potestatem, Judge's Clerk	0	1	0

CIRCUIT COMPANION.

An Account of Fees taken at the Chambers of the Puisne Judges of the Court of King's Bench by their Clerks.

	l.	s.	d.
BAIL on <i>habeas corpus</i> in term, Master of the office	4s.	10d.	
Judge's Clerk	1s.	2d.	
Porter	6d.		
In vacation, Master of the office	4s.	10d.	
Judge's Clerk	2s.	2d.	
Porter	6d.		
Bail on <i>cepi corpus</i> in term, Master of the office	2s.	6d.	
Judge's Clerk	1s.		
Porter	6d.		
In vacation, Master of the office	2s.	6d.	
Judge's Clerk	2s.		
Porter	6d.		
Filazer's bail, Judge's Clerk			
<i>Fiat</i> for <i>certiorari</i> , writ of <i>certiorari</i> , an order, extra-judicial affidavits, bail on writ of error, additional ditto, <i>fiat</i> , <i>superfedeas</i> , paper-book, a case, filing interrogatories, signing depositions, every witness sworn to be examined before a Judge, or Referees by rule of court, each, Judge's Clerk			
Summons, rule for bail or better bail, adding or justifying bail, signing a common bail-piece, affidavits, or Quaker's affirmation (except of debt in order to hold to bail), rules in ejectment, each, to Judge's Clerk, in term			
In vacation			
Affidavit of a debt to hold to bail, and swearing an Attorney, each, to Judge's Clerk			
<i>Habeas corpus</i> & <i>fiat</i> , to Judge's Clerk			
* Bail on <i>certiorari</i> , or to appear to try indictment, in term, to Judge's Clerk			
In vacation, to Judge's Clerk			
Admission of a guardian, and caption of a fine, each, to the Judge	6s.	8d.	
Judge's Clerk	5s.		
Porter	4d.		
Warrant in Delegates, appointment to hear Counsel, admission in <i>jorma pauperis</i> , entering every <i>caveat</i> , carrying a bail-piece to <i>Westminster</i> , approbation of Commissioners for bails or affidavits, each, Judge's Clerk			
Commitment and render in discharge of bail, each, to Deputy Marshal	2s.		
Clerk of the Papers	1s.		
Judge's Clerk	4s.		
Tipstaff	6s.		
Porter	6d.		
Sentence in Delegates, attendance by Counsel each side, Judge's warrant, commitment thereon for want of bail, <i>superfedeas</i> to a Judge's warrant, order to charge a person in custody for a criminal matter with an action, each, Judge's Clerk			
Passing Sheriff's accounts, Judge's Clerk			
Taking away special bail (if it remains upon the file above a year) each year, and judgment by confession, each, Judge's Clerk			
Special orders for bail upon affidavits before suing out the writ, including swearing the affidavit, Judge's Clerk			
Bail on Judge's warrant, Judge's Clerk	3s.	6d.	
Tipstaff	2s.		
Footman	1s.		
Acknowledging a deed, depositions upon interrogatories, or suggestion for a prohibition, every witness, Judge	6s.	8d.	
Judge's Clerk	2s.		

[* 755]

The Clerk of Assize's

Judge's Clerk's attendance to take an affidavit as a Commissioner, usually	-	-	0	6	8
Copies of depositions, each sheet copy-wise, Judge's Clerk	-	-	0	0	8
Judge's Clerk receives from every prisoner committed or rendered, for the Chaplain of the <i>King's Bench</i> prison, pursuant to a rule of court	-	-	0	2	0
For every <i>habeas corpus</i> signed at the <i>King's Bench</i> office	-	-	-	-	-
1s. is received for the Clerks at the Judge's chambers, to be divided among them	-	-	0	1	0
Received each term for signing writs of <i>dedimus potestatem</i> , Judge 10l. Clerk 1l.	-	-	11	0	0
Returning <i>dedimus potestatem</i> , Judge's Clerk	-	-	0	1	4

[* 756]

* C O M M O N P L E A S .

Fees received by the Marshal in London and Middlesex, in the Court of Common Pleas.

F OR entering the record	-	-	0	13	9
Unde to the Chief Justice	-	-	0	10	9
To the Marshal	-	-	0	2	0
To the Associate	-	-	0	1	0
To the Marshal for a warrant of attorney	-	-	0	4	0
<i>Retraxit</i>	-	-	0	4	0
<i>Ne recipiatur</i>	-	-	0	4	0
Calling the cause	-	-	0	2	0
Tales	-	-	0	2	0
Default	-	-	0	2	0
Defendant's verdict	-	-	0	2	0
Nonfuit	-	-	0	2	0
Calling defendant to confess, &c.	-	-	0	2	0
Withdrawing Juror	-	-	0	2	0
Rule of reference	-	-	0	2	0
To the Train-bearer	-	-	0	2	0
To the livery servants	-	-	0	2	0

Fees taken by the Lord Chief Justice's Cryer of the Court of Common Pleas in London and Middlesex.

C ALLING tales, and default, each	-	-	0	2	0
Nonfuit, and defendant's verdict, each	-	-	0	2	0
Calling defendant to confess lease, entry, and ouster, in ejectment	-	-	0	2	0
Swearing every witness	-	-	0	0	4
Swearing an interpreter	-	-	0	2	0
Withdrawing a Juror	-	-	0	2	0
In <i>qui tam</i> causes double fees taken.					

Fees taken by the Associate of his Majesty's Court of Common Pleas for London and Middlesex.

C ALLING the cause	-	-	0	2	0
Reading the record	-	-	0	2	0
For a default 2s. for a tales 2s.	-	-	0	4	0

For

CIRCUIT COMPANION.

		<i>l.</i>	<i>s.</i>	<i>d.</i>
8	For entering and filing the record of <i>nisi prius</i>	-	0	2 0
	Taking notes in court	-	0	2 0
8	Reading every deed, or other exhibit	-	0	1 0
	Drawing every certificate signed by the Judge	-	0	4 0
	For every order of <i>nisi prius</i> , each party 4s. for the copy			
0	1s.	-	0	5 4
	For every plaintiff's verdict	-	0	0
	If more than one issue, for each	-	0	1 0
0	For defendant's verdict, or nonsuit	-	0	4 0
	For return of the <i>poslea</i>	-	0	2 0
0	For withdrawing a Juror on each side	-	0	2 0
4	For private verdict	-	0	6 8
	For taking notes of a special verdict	-	0	6 8
	For drawing the special verdict, <i>per</i> sheet, each side	-	0	1 0
	For engrossing and entering, each side	-	0	1 0
	For copy thereof	-	0	0 4

Fees taken at the Chambers of the Lord Chief Justice of the Court of Common Pleas, by his Clerks.

9	B AIL upon a <i>habeas corpus</i> in term, Chief Justice 3s.			
9	Clerk 1s. Prothonotary 2s. Porter 4d.	-	0	6 4
0	In vacation, Chief Justice 3s. Clerk 2s. Prothonotary 2s.			
0	Porter 4d.	-	0	7 4
4	Bail upon a <i>certiorari</i> , reversal of an outlawry, bail upon			
4	an attachment of privilege, Filazer's bail, bail upon			
0	reversal of an outlawry, in term, Chief Justice 1s. 10d.			
2	Clerk 3s. 2d.	-	0	5 0
0	In vacation, Chief Justice 9s. 8d. Clerk 2s. Porter 4d.	-	0	12 0
2	A commitment to the <i>Fleet</i> , Chief Justice 3s. Clerk 2s.			
2	Prothonotary 2s. Porter 4d.	-	0	7 4
2	Satisfaction acknowledged upon record, Chief Justice 9s.			
2	8d. Clerk 2s. Porter 4d.	-	0	12 0
2	A <i>reddidat se</i> upon a Prothonotary's bail, Chief Justice			
2	9s. 8d. Clerk 2s. Prothonotary 4s. Porter 4d.	-	0	16 0
2	A fine, a warrant of attorney, and admission <i>per</i> guardian,			
0	each, Chief Justice 6s. 8d. Clerk 5s. Porter 4d.	-	0	12 0
mm	Every caption of a fine, after the first caption, Clerk	-	0	3 4
	A deed acknowledged out of court, Chief Justice 4s.			
2	Clerk 1s.	-	0	5 0
2	Every witness to prove a suggestion, or depositions on in-			
0	terrogatories, Chief Justice 9s. 8d. Clerk 2s. Porter			
2	4d.	-	0	12 0
0	Copies of depositions, each sheet copy-wise, Clerk	-	0	0 8
0	<i>Allocatur</i> to a fine, a <i>habeas corpus</i> , <i>certiorari</i> , and <i>super</i>			
2	<i>sedeas</i> , or <i>fiat</i> for <i>superfedeas</i> , each, Chief Justice	-	0	4 0
2	* Summons, book, order, bail added or justified, bail on			
	writ of error, each Clerk	-	0	2 0
	Certificate that no bail is put in, Clerk	-	0	0 4
n	Every affidavit at the chambers, or Quaker's affirmation,			
	in term, Clerk	-	0	1 0
	In vacation, Clerk	-	0	2 0
2	Every affidavit (except affidavits on the statutes to hold			
2	to bail, which is one shilling only) in term, Clerk	-	0	1 0
4	In vacation, Clerk	-	0	2 0

D d

Filing

[* 758]

The CLERK of ASSIZE'S

Filing interrogatories, signing depositions, every witness	<i>l.</i>	<i>s.</i>	<i>d.</i>
sworn to be examined before a Judge, or Referees by rule of court, each Clerk	-	0	2 0
Certifying a Sheriff's allowance, Chief Justice	6s. 8d.		
Clerk	3s. 4d.	-	0 10 0
Commissions for bails and affidavits (excluding engrossment, parchment, and duty) Clerk	-	0	18 6
<i>Fiat</i> for a commission of sewers, Clerk	-	0	10 0
Every appointment for Delegates, Clerk	-	0	2 6
Sentence in Delegates	-	0	5 0
Escape warrant, Clerk	-	0	5 6
Every attendance by Counsel at the chambers, each side, Clerk	-	0	5 0
For certifying on the back of the record, Clerk	-	0	2 0
Bye-laws of a corporation allowed in town at the Chief Justice's chambers, Chief Justice	5l. Clerk	3l.	8 0 0
Acknowledging every statute, Chief Justice	3s. 4d. Clerk		
	2s.	-	0 5 4
Judge's Clerk's attendance to take an affidavit as a Commissioner, Clerk	-	0	6 8
For swearing every Attorney, Clerk	-	0	1 0
Taken of the Curfitors for <i>dedimus</i> at the end of every term, Chief Justice	12l. 10s. Clerk	1l. 5s.	- 13 15 0

Fees taken at the Chambers of the Puisne Judges of the Court of Common Pleas, by their Clerks.

B AIL upon <i>habeas corpus</i> in term, Judges	3s. Clerk		
1s. Prothonotary	2s. Porter	4d.	- 0 6 4
In vacation, Judges	3s. Clerk	2s. Prothonotary	2s. Porter
	4d.	-	- 0 7 4
Bail upon a <i>certiorari</i> , reversal of an outlawry, bail upon an attachment of privilege, a Filazer's bail, and bail upon reversal of an outlawry, in term, Judges	1s. 10d. Clerk	3s. 2d.	- 0 5 0
* In vacation, Judges	9s. 8d. Clerk	2s. Porter	4d. 0 12 0
A commitment to the <i>Fleet</i> , Judges	3s. Clerk	2s. Prothonotary	2s. Porter
	4d.	-	- 0 7 4
Satisfaction acknowledged upon record, Judges	9s. 8d. Clerk	2s. Porter	4d. 0 12 0
A <i>reddidit se</i> upon a Prothonotary's bail, Judges	9s. 8d. Clerk	2s. Prothonotary	4s. Porter
	4d.	-	- 0 16 0
A <i>reddidit se</i> upon a Filazer's bail, Judges	9s. 8d. Clerk	2s. Porter	4d. 0 12 0
A fine, a warrant of attorney, and an admission by guardian, Judges	6s. 8d. Clerk	5s. Porter	4d. 0 12 0
Every caption of a fine, after the first caption, Clerk	-	0	3 4
A deed acknowledged out of court, Judges	4s. Clerk	1s.	0 5 0
Every witness to prove a suggestion, or depositions on interrogatories, Judges	9s. 8d. Clerk	2s. Porter	4d. 0 12 0
Copies of depositions, each sheet copy-wise, Clerk	-	0	0 8
An <i>allocatur</i> to a fine, a <i>habeas corpus</i> , a <i>certiorari</i> , and <i>superfedeas</i> , or <i>fiat</i> for a <i>superfedeas</i> , each, Judges	-	0	4 0
Summons, book, order, bail added or justified, bail on a writ of error, each Clerk	-	0	2 0
Certificate that no bail is put in, Clerk	-	0	0 4
			Every

CIRCUIT COMPANION.

d.	Every affidavit at the chambers, or Quaker's affirmation, <i>l. s. d.</i>			
	in term, Judges 8d. Clerk 4d.	-	0	1 0
o	In vacation, (except affidavits on the statutes to hold to			
	bail, which are one shilling only,) Judges 1s. 4d.			
o	Clerk 8d.	-	0	2 0
6	Certifying a Sheriff's allowance, Judges 6s. 8d. Clerk			
o	3s. 4d.	-	0	10 0
o	Returning a <i>dedimus potestatem</i> , Clerk	-	0	1 4
o	An appointment for Delegates, Clerk	-	0	2 6
6	Sentence in Delegates, Clerk	-	0	5 0
6	Escape warrant, Clerk	-	0	5 0
o	Approbation of a Commissioner for taking affidavits or bail			
o	in the country, Clerk	-	0	2 6
o	Every attendance by Counsel at the chambers, each side,			
o	Clerk 5s.	-	0	10 0
o	Judge's Clerk's attendance by Counsel, at the chambers,			
4	each side, Clerk 5s.	-	0	10 0
8	Judge's Clerk's attendance to take an affidavit as a Com-			
o	missioner, Clerk	-	0	6 8
o	Swearing an Attorney, Clerk	-	0	1 0
o	Filing interrogatories, signing depositions, every witness			
o	sworn to be examined before a Judge, or Referees by			
o	rule of court, Clerk	-	0	2 0
of	Received each term for signing <i>dedimus potestatem</i> , Judges			
	12l 10s. Clerk 1l. 5s.	-	13	15 0

[* 760]

Fees belonging to the Four Cryers of his Majesty's Court of Common Pleas, viz.

6 4	FOR every affidavit or oath in court	-	0	0 6
7 4	For every roll in court	-	0	0 6
	For every old roll in court	-	0	1 0
	For every bail taken in court	-	0	1 0
	For every guardian admitted in court	-	0	1 0
5 0	For every wager in law	-	0	4 4
2 0	For every <i>nisi prius</i> in <i>Middlesex</i>	-	0	8 0
	For every trial at bar	-	2	0 0
7 4	For calling every Jury at bar	-	0	4 0
	For every nonsuit at bar	-	0	4 0
2 0	For calling every bail upon a fore-judger	-	0	0 6
6 0	For every Attorney for calling them all the term, at the			
	end of the term	-	0	0 4
	For every Serjeant at law, at the end of every term	-	0	4 0
2 0	For every Serjeant called to the bar	-	2	0 0
	For every Judge that comes to the bench	-	2	0 0
12 0	For every Filazer, or other Officer, upon their admission			
3 4	into their office	-	2	0 0
5 0	For the <i>Custos Brevium</i> at the end of the term	-	0	4 6
	For the Fine-office at the end of the term	-	0	5 0
12 0	For every Prothonotary at the end of the term	-	0	2 6
0 8	For every Filazer, or other Officer, at the end of every			
	term	-	0	2 0
4 0	For warning any Attorney, or Under-Sheriff, before a			
	Judge, upon complaint	-	0	2 6
2 0	For every prisoner charged in court	-	0	1 0
0 4	For every person entering into recognizance	-	0	1 0

D d 2

For

The CLERK of ASSIZE's

	l.	s.	d.
For every common recovery passed at bar	-	0	0 6
For every common recovery that is passed at bar by any Peer of <i>England</i>	-	0	5 0
For every Attorney sworn in court	-	0	8 0
Which fee is taken away by an Act of Parliament in the second year of our Sovereign Lord King <i>George</i> the Second, intituled, <i>An act for the better regulating Attor-</i> <i>nies and Solicitors</i> , and likewise by an Act of Parliament passed in the first year of our Sovereign Lord <i>George</i> the First, intituled, <i>An act for the * further Security of his</i> <i>Majesty's Person and Government</i> , two oaths are admi- nistered to the witnesses of every certificate of those gentlemen who receive the sacrament to qualify them- selves for places under his Majesty, for which oaths we do not receive any thing but what gentlemen in their goodness are pleased freely to give us, which upon other occasions would be	-	0	1 0
For keeping a Jury when they go from the court to con- sider of their verdict	-	0	4 0
For entering a fore-judger in a book kept for that purpose, which book was some time since kept by another person	0	0	6

*Fees belonging to the Court-Keeper of his Majesty's Court of Common
Pleas.*

FOR brushing the tapestry-hangings, books, and other things, at the end of the term	-	0	3 4
For every wager in law 9s. 4d, out of which money the Court-Keeper pays the six compurgators	-	0	6 0
For every trial at bar	-	0	5 0
For every <i>nisi prius</i> in <i>Middlesex</i>	-	0	2 0
If tried by candle-light, for candles	-	0	1 6
For every bail in court	-	0	0 4
For every fine in court	-	0	0 4
For every guardian admitted in court	-	0	0 4
For every Filazer, or other Officer, upon their admission into their office	-	0	5 0
For every Serjeant's call to the bar	-	0	5 0
For every Judge that comes to the bench	-	0	5 0
For every Prothonotary at the end of every term	-	0	2 6
For the Clerk of the Warrants, at the end of every issu- able term	-	0	5 0
For every Secondary, at the end of every term	-	0	1 0
For the Fine-office, at the end of the term	-	0	2 0
For every Serjeant, at the end of the term	-	0	1 0
For the <i>Custos Brevium</i> , at the end of the term	-	0	1 6
For every Attorney sworn in court	-	0	1 0
Which fee is taken away by an Act of Parliament, the second year of our Sovereign Lord King <i>George</i> the Second, intituled, <i>An Act for the better regulating At-</i> <i>tonnies and Solicitors</i> .			

CIRCUIT COMPANION.

* Fees belonging to the Porter of his Majesty's Court of Common Pleas. [* 762]

			l.	s.	d.
F OR every fine in court	-	-	0	0	4
For every bail in court	-	-	0	0	4
For every guardian in court	-	-	0	0	4
For every judgment acknowledged	-	-	0	0	2
For every trial at bar	-	-	0	5	0
For every Attorney sworn in court	-	-	0	1	0
For every wager in law	-	-	0	0	6
For every <i>nisi prius</i> in <i>Middlesex</i>	-	-	0	2	0
For every Serjeant called to the bar	-	-	0	5	0
For every writ of entry	-	-	0	0	4
For every Judge that comes to the bench	-	-	0	5	0
For every Filazer or other Officer, upon their admission into their office	-	-	0	5	0
For the Fine-office, at the end of the term	-	-	0	4	0
For the <i>Custos Brevium</i> , at the end of the term	-	-	0	1	6
For the Clerk of the Warrants, at the end of the term	-	-	0	0	6
As touching the fees of twopence for every judgment, and fourpence for every writ of entry, twenty shillings is paid every term by his Majesty's Attorney-General in satisfaction for the same.					

EXCHEQUER.

Fees taken by the Marshal of the lord Chief Baron in *London* and *Middlesex*.

In the King's Remembrancer's Office.

E NTERING the cause, Lord Chief Baron 13s. 4d.					
Marshal 3s. 4d.	-	-	0	16	8
Calling tales and default, Marshal	-	-	0	12	0
Clerk and Coachman, Marshal	-	-	0	4	0
Returning the <i>poslea pro Rege</i> , Marshal	-	-	0	10	10
Returning the <i>poslea</i> for the defendant, Marshal	-	-	0	14	10
Every defendant's verdict, Marshal	-	-	0	4	0
Every exhibit, Marshal	-	-	0	2	0
Every rule of court, on each side, Marshal	-	-	0	6	8
Withdrawing a Juror, Marshal	-	-	0	4	0
* Minutes of a special verdict, Marshal	-	-	0	6	8
Drawing <i>per sheet</i> , Marshal	-	-	0	3	4

In the Office of Pleas.

Entering the cause, Lord Chief Baron 13s. 4d. Marshal 3s. 4d.	-	-	0	16	8
Calling tales and default, Marshal	-	-	0	6	0
Clerk and Coachman, Marshal	-	-	0	4	0
Returning <i>poslea</i> , Marshal	-	-	0	2	4
Defendant's verdict and <i>poslea</i> , Marshal	-	-	0	4	4
Every exhibit, Marshal	-	-	0	1	0
Every rule of court, on each side, Marshal	-	-	0	3	4
Withdrawing					

The CLERK of ASSIZE'S

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Withdrawing a Juror, Marshal	-	-	0 2 0
Nonsuit, Marshal	-	-	0 2 0
Minutes of a special verdict, Marshal	-	-	0 3 4
Drawing <i>per theet</i> , Marshal	-	-	0 3 4
Also the following fee, <i>viz.</i> every Judge's certificate of a battery	-	-	0 6 8

Fees taken by the Lord Chief Baron's Cryer at the Sittings in
London and Middlesex.

King's Causes.

FOR calling a King's cause with one defendant	0	12	0
Swearing every witness	-	-	0 0 8
Proclamation for information	-	-	0 6 8
A verdict	-	-	0 4 0
<i>Voyer dire</i>	-	-	0 2 0
Withdrawing Juror	-	-	0 4 0
Quaker's affirmation	-	-	0 2 6

In London and Middlesex Causes between Party and Party.

Calling cause	-	-	0 6 0
Swearing jur'	-	-	0 2 0
Verdict	-	-	0 2 0
All other fees the same as upon the circuit.			

[* 764]

* Fees taken at the Lord Chief Baron's Chambers.

ALLOWING a bill, warrant for an attachment, licence to compound, and <i>fiat</i> for a commission on the King's Remembrancer's side, Chief Baron	0	2	0
A fine or composition, to the first Baron 6s. 8d. Clerk 2s.	-	-	0 8 8
To the second Baron 2s. 6d. Clerk 1s.	-	-	0 3 6
A warrant for an extent, recognizance, and writ of delivery, each Baron 6s. 8d. Clerk 2s.	-	-	0 8 8
A <i>habeas corpus</i> , <i>superfedeas</i> , <i>certiorari</i> , or <i>procedendo</i> on the King's Remembrancer's side, Chief Baron 6s. 8d. Clerk 2s.	-	-	0 8 8
Declaring Receiver's accounts, and swearing the same, Chief Baron 6s. 8d. Clerk 3s.	-	-	0 9 8
Every defendant to an answer, every deponent to an affidavit, or Quaker's affirmation, every port book, every commission returned on oath, or estreat sworn to, Clerk	-	-	0 1 0
A letter to a nobleman, a <i>caveat</i> , a <i>capias</i> on information, a summons, order, paper book each term carried to <i>Westminster</i> , or affidavit where no cause in court, each, Clerk	-	-	0 2 0
An information on seizure, Clerk	-	-	0 1 0
A personal information, Clerk	-	-	0 0 0
An attendance from the King's Remembrancer's office, Clerk	-	-	0 2 0

CIRCUIT COMPANION.

		l.	s.	d.
	An appointment for Counsel, admission of a pauper, Excise, Stamp-office, and other accounts, each person sworn, summons in the Delegates, each, Clerk	0	2	6
	Swearing an officer of excise, customs, or other office, and certificate thereof, Clerk	0	4	0
	Attendance by Counsel, each side, and every sentence in the Delegates, Clerk	0	5	0
	A <i>habeas corpus</i> in the office of pleas, Chief Baron	0	4	0
	A bail, or <i>allocatur</i> to a bail, 11s. out of which 2s. 4d. is taken for the Tipstaff, Chief Baron 6s. 8d. Clerk 2s.	0	11	0
	A surrender or commitment on <i>habeas corpus</i> , Chief Baron 6s. 8d. Clerk 4s.	0	10	8
	A warrant to pay money levied, a warrant for inrolment of a deed or deputation, a warrant * for a day for a Sheriff, or for a <i>dedimus</i> to swear a Sheriff to account, a warrant <i>de excom' vic'</i> , fiat for a writ of assistance, warrant for an innovate tally, and certifying Sheriff's allowances, each, Chief Baron 6s. 8d. Clerk 4s.	0	10	8
	Every answer or witness sworn in prison, or being sick at his own house, Chief Baron 11. 1s. Clerk 5s.	1	6	0
	Every additional bail, and each person justifying, Clerk	0	2	0
	An escape warrant, Clerk	0	5	0
	Returning a <i>dedimus</i> to a fine, Clerk	0	1	0
	<i>Dedimus</i> money received each term, Chief Baron 10l. Clerk 11.	11	4	0
	Every plea signed by a Baron in the Treasurer's Remembrancer's office, Chief Baron 6s. 8d. Clerk 2s.	0	8	8
	Every plea to a second or third admission to a benefice, in the First Fruits Office, Chief Baron 6s. 8d. Clerk 2s.	0	8	8
	For perusing a title-deed, Chief Baron 11. Clerk 5s.	1	5	0
	Return of <i>non solvens</i> , Clerk	0	1	0
	But if the return does not come in by the 1st of June, an <i>allocatur</i> , Chief Baron 6s. 8d. Clerk 2s.	0	8	8
	Every affidavit taken by commission by a Baron's Clerk	0	1	0
	Attendance to take the same, usually, Clerk	0	6	8

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An Account of Fees peculiar to the Lord Chief Baron and his Clerk.

	T REASURER and Paymaster of the Ordnance, Chief Baron 31. 6s. 8d. Clerk 10s.	3	16	8
	Master of the Wardrobe, Chief Baron 21. 13s. 4d. Clerk 16s. 6d.	3	9	10
	Treasurer of the Navy, Chief Baron 31. 6s. 8d. Clerk 10s.	3	16	8
	Viſtualling account, Chief Baron 31. 6s. 8d. Clerk 10s.	3	16	8
	Paymaster of the Works, Chief Baron, 21. Clerk 10s.	2	10	0
	Swearing to the account of the Governor of the Isle of Wight, Clerk	0	13	4
	Treasurer of the Chamber, Chief Baron 31. 6s. 8d. Clerk 10s.	3	16	8
	Hanaper account, Chief Baron 11. Clerk 6s. 8d.	1	6	8
	* Declaring the First Fruits accounts, Chief Baron 10l. Clerk 11.	11	0	0
	First Fruits securities allowed, Chief Baron 4s. Clerk 2s.	0	6	0
	Allowing			

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The Clerk of Assize's

Allowing a writ of error, Chief Baron	13s. 4d.	Clerk	6s.	0	19	4
Swearing the Post office account, Clerk				1	0	0
Declaring the Custom-house account, for each, which is divided between the Barons, Chief Baron	10l	Clerk	11. 11	0	0	
Every commission to take affidavits or bails in the country, including the stamps, and 2s. 6d. paid to the Baron's Clerk who signs the approbation, Clerk				1	4	0

Fees taken at the Chambers of the Puisne Barons of the Court of Exchequer.

ALLOWING a bill, warrant for an attachment, licence to compound, and <i>fiat</i> for a commission on the King's Remembrancer's side, Baron				0	2	0
A fine or composition, the first Baron that signs it	6s. 8d.	Clerk	2s.		0	8 8
The second Baron that signs the said fine or composition	2s. 6d.	Clerk	1s.		0	3 6
A warrant for an extent, recognizance, and writ of delivery, each Baron	6s. 8d.	Clerk	2s.		0	8 8
A <i>habeas corpus</i> , <i>superfedeas</i> , <i>certiorari</i> , or <i>procedendo</i> on King's Remembrancer's side, Baron	6s. 8d.	Clerk	2s.	0	8	8
Declaring Receiver's account, and swearing to the same, Baron	6s. 8d.	Clerk	3s.		0	9 8
Every defendant to an answer, every deponent to an affidavit, or Quaker's affirmation, every port-book, commission returned on oath, estreat sworn to, or information on seizures, Clerk				0	1	0
A personal information, Clerk				0	0	6
A letter to a nobleman, a <i>caveat</i> , a <i>capias</i> on information, a summons, order, paper-book each term carried to <i>Westminster</i> , or affidavit where no cause in court, Clerk				0	2	0
Attendance from the King's Remembrancer's office, each side, appointment for Counsel, admission of pauper, Excise, Stamp office, and other accounts, each person sworn, summons in the Delegates, and approbation of a Commission to take affidavits, each, Clerk				0	2	6
Swearing an officer of the excise, customs, or other officer, and certificate thereof, Clerk				0	4	0
Attendance by Counsel, each side, every sentence in Delegates, or escape warrant, Clerk				0	5	0
A <i>habeas corpus</i> in the office of Pleas, Baron				0	4	0
A bail, or <i>allocat</i> to bail (there is taken for the Tipstaff	2s. 4d.)	Baron	6s. 8d.	Clerk	2s.	0 11 0
Every additional bail, and each person justifying, Clerk				0	2	0
A surrender or commitment on <i>habeas corpus</i> , Baron	6s. 8d.	Clerk	4s.		0	10 8
A warrant to pay money levied, a warrant for an enrolment of a deed or deputation, or warrant for a day for a Sheriff, or for a <i>dedimus</i> to swear a Sheriff to account, a warrant <i>de excom. vic'</i> , <i>fiat</i> for a writ of assistance, warrant for an innovate tally, and certifying Sheriffs allowances, each, Baron	6s. 8d.	Clerk	2s.		0	8 8
Every answer or witness sworn in prison, or being sick at their own house, Baron	11. 1s.	Clerk	5s.		1	6 0
						Returning

CIRCUIT COMPANION.

Returning a <i>dedimus</i> to a fine, Clerk	-	0	1	4
Received each term for returning <i>dedimus potestatem</i> , Baron				
1. l. Clerk 1l.	-	11	0	0
Every affidavit to a debt, Clerk	-	0	1	0
Every plea signed by a Baron in Treasury Remembrancer's side, Baron 6s 8d. Clerk 2s.	-	0	8	8
Every plea to a second or third admission to a benefice in the First Fruits office, Baron 6s. 8d. Clerk 2s.	0	8	8	
For perusing a title-deed, Baron 1l Clerk 5s.	1	5	0	
Return of <i>non solvens</i> , Clerk	-	0	1	0
But if the return does not come in by the 1st of June, an <i>allocat'</i> , Baron 6s. 8d Clerk 2s.	-	0	8	8
Every affidavit taken by commission by a Baron's Clerk	0	1	0	
Attendance to take the same, usually, Clerk	-	0	6	8

Fees now taken by the four several Examiners of his Majesty's Court of Exchequer.

T O the Examiner for filing the interrogatories	0	2	0
To the Baron for swearing every witness	0	2	0
To the Baron for signing every exhibit	-	0	2
For the duty of every sheet of paper to take depositions on	0	0	2
* For every office-copy of the depositions, 10d. <i>per</i> sheet			

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	<i>viz.</i>			
	To the Examiner	{	Drawing	0 0 6
			Copying.	0 0 2
			Duty	0 0 2
To the Baron for signing every copy	-			0 2 0
In pauper causes	-			0 2 0
The said examiners take only 4d. <i>per</i> sheet in lieu of all the above mentioned fees, there being no stamp upon those examinations.				

I N D E X

T O T H E

L A W, P R A C T I C E, &c.

*** It has been thought convenient to point out the contents of this work by three distinct indexes, being first, an index to the law, practice, and particular parts of matter and form; secondly, an index to the precedents; and lastly, an index to the clerk of assize's circuit companion.

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^b A clerk of assize has not a lien upon the records in his custody for fees; and if he draws an indictment with unnecessary prolixity, he may be ordered to pay the extraordinary expence.
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